
AVRI DORIA:

Thank you all for coming to this meeting, for being willing to set it up so quickly. I wanted to start and just say something at the beginning. That has to do with, as you are all probably aware, several of us in the OEC and the Board are NomCom appointees, and whenever we're doing all this we try to keep that at the back of our minds and make sure that we're careful in our actions in this to avoid any conflict of interest or any apparent conflict of interest.

We've gone through the discussion, and we really don't believe that there is a strong or even a mild conflict of interest at this point in our discussions. However, basically what we decided was we'd watch ourselves as we were going forward, we would all be very careful and such, and we would make personal decisions.

In terms of leading the subject within the OEC, I decided that for myself being the chair and the lead put me in more of a risk of an apparent conflict of interest because of agenda setting and all those other things that chairs get to do. So with the approval of the rest of the OEC and with his kind participation, I basically asked Patricio to take the lead in the substantive conversations. I'm still working with him and helping get through all the procedure with, of course, the staff that really helps get through all the procedure.

So I just wanted to discuss that at the beginning, explain it, and turn my part of this over to Patricio to run the meeting from the OEC side. So thanks. Patricio?

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PATRICIO POBLETE:

Thanks, Avri, for the introduction. I am Patricio Poblete, the designated non NomCom member of the OEC. First of all, I would like to thank you for agreeing to this meeting. We are quite aware of the amount of work that you are doing, and we're thankful for it because the NomCom is an essential part of ICANN. The role that it plays is a crucial one. And therefore, the job that you are doing is also crucial for the success and the future evolution of ICANN and the whole of the community.

We have several topics that we would like to discuss with you. There is an agenda that you can see. We will ask you to give us your thoughts on various of the recommendations and how they are being implemented.

But before delving into that with the help of my colleagues, I'd like to reflect a little on in general how we perceive the work of the working group as it's being done, considering again how important it is for ICANN and the whole community.

The implementation of the review of the NomCom differs in substantial ways to the way that same task is approached for other parts of ICANN, the SOs and the ACs. There, there is a number of participants in those communities that take this task and carry it forward, sometimes for several years. And there is the leadership in those SOs and ACs that oversees and finally approves that implementation work.

That's not the case here because, as we're all well aware, essentially the whole of the NomCom is renewed or reappointed every year. And there's no leadership, therefore, that can play this role so it falls on the OEC to do this oversight and when recommending approval of the work to the Board to make sure that all the conditions have been met.

As I said before, going into the specifics of the various questions that we have as a general question, we'd like to—and actually we need to—make sure that the implementation that's being carried on is in line with expectations of the ICANN community and the Board.

We note that there have been several changes that have been made in this implementation work compared to the plan that was originally approved. We attended the webinar that you gave, and I'm not quite sure if those changes were highlighted so the community would be aware of what those changes are and the way also that the support of the community was assessed, not just informing the community but also making sure that the community supports all those changes.

So we as questions and as a way to make sure that there is sufficient transparency and rationale to whatever changes are being made, we'd like to know what your thoughts are on ways to bring more transparency to certain aspects of this implementation, highlighting the changes, and including the rationale of the working group to make sure that there's broad support and understanding in the community. And if more work is needed on that, how can we from the OEC and the Board best support you in that work?

TOM BARRETT:

Thank you, Patricio. This is Tom Barrett, for those of you who don't me. I appreciate those questions, and we've discussed that quite a bit within the working group.

As you know, this review has gone through several phases. It probably started almost four years ago selecting the independent evaluator

where they went through their process to interview folks across the community to come up with their report. And then we went through a feasibility phase. So these 27 recommendations, is it feasible to implement them as they suggesting, or should we make some tweaks?

So there were some tweaks made, and I think there are two or three here that we can talk to specifically. But throughout the feasibility and then implementation planning, we have tweaked to try to make sure these recommendations are feasible as well as doable within the near-term timeframe.

We have conducted pre-ICANN webinars several times a year, but I understand not everyone pays attention sometimes to some of those webinars. But I do want to, I guess, give you one over guiding principle that I think the working group has followed. And you'll see that some of these changes I think will reflect that as well.

But basically, we have as you've seen a bunch of bylaw changes we are proposing to do. We've tried to keep the changes to the bylaws fairly lightweight because the ICANN community continues to evolve and we want to be able to follow a process of continuous improvement and allow that evolution to take place without needing to go back and do another bylaw change. So that's a guiding principle that I think is reflected in the two or three recommendations you see here on the screen.

The outcome of our work hopefully will be represented not only in the ICANN bylaws but in two documents. One is the NomCom operating procedures which is published today on the ICANN website. And the

other one is really the standing committee operating procedures which so far is represented by the standing committee charter that you've seen. But those two documents really represent what the NomCom does to not only ensure an efficient operations and productive outcome for the Board and the other groups but also to make sure it is accountable and transparent in whatever it does to the overall community.

So would you like me to step through and talk about some of the changes, or should I pause here and see if there are any questions?

PATRICIO POBLETE:

Not yet. I think we are going to go through each of the specific recommendations a little on, but I thank you for your comments. Do you feel that those tweaks, as you say, or changes that you have made compared to the initial implementation plan have been sufficiently highlighted to the community by the working group and that you've gathered enough evidence of support from the community, from the broader community?

TOM BARRETT:

Yeah, so let me just take the Recommendation 10, Rebalancing. I think this is a great example of what we're talking about. I know Cheryl is saying, yes, she feels like we've been really transparent in what we're trying to do.

So Recommendation 10—and I don't know if, Jean-Baptiste, you have the example, the actual recommendation available—but it basically says

that the NomCom composition should be rebalanced every five years and it should happen immediately. So that's the recommendation out of the IE report.

As the working group went through the feasibility of trying to figure out how to do rebalancing, do we look at all the seats? What do we do with the GAC seat which has never been filled, for example? There's another competing recommendation saying don't change the number of people that are on the NomCom, so we agreed to keep it at the current count. It became clear that the best opportunity for rebalancing was within the GNSO.

That's the only constituency, so to speak, where it seems it [hasn't] evolved since the NomCom was formed. There are no new stakeholder groups within the GNSO that weren't there when the NomCom was first constituted. And clearly, the independent evaluator, if you read their detailed comments, called out the GNSO as the most likely area where rebalancing made sense.

And so we stepped back and said, well, we're a working group. Should we just go ahead and figure this out, or is this something we should really delegate to the GNSO to handle on their own? So the consensus was this is something the GNSO should figure out.

What's happening now though is we are not rebalancing the GNSO in our bylaw change. And that's, I think, a point of confusion because it's called the rebalancing recommendation. So instead of saying we're going to rebalance anything, we want to facilitate the GNSO or some cross-community working group to do the rebalancing themselves. And

so we've decided as a review we will facilitate that continuous improvement by the community itself.

So if you read the detailed text for what's called the rebalancing exercise, we're actually not rebalancing. We're not changing the composition of the NomCom at all, but we're removing from the ICANN bylaws some hardcoded language saying how those GNSO seats should be allocated.

So that would seem to be fairly innocuous and noncontroversial, but I know it's not. And the reason it's not is if they go through a GNSO review or some sort of holistic review from ATRT3, I think that there are certain parties that feel like they would be losers in a rebalancing exercise. And so they don't want to start down that path because they think the eventual answer is they'll no longer have a seat at the NomCom.

And so there is some vocal opposition that we're aware of. [We've tried] to explain we're not rebalancing anything. That's something that either would be handled by the GNSO itself or would be handled by some other cross-community group. We're simply trying to facilitate that process as part of our review. And so even though it says NomCom rebalancing, it doesn't rebalance anything. It simply removes from the ICANN bylaws the hardcoding which would be an obstacle to a future rebalancing exercise.

So I guess that's why we feel like, yes, we understand there's opposition to this, but it's not because of the bylaw change. It's because of what may happen later that would be facilitated by the bylaw change.

Do you want to weigh in, Cheryl?

CHERYL LANGDON-ORR:

Tom, thanks for the opportunity. No, what you're covering is absolutely correct. I do want to make it very clear to our friends of the OEC today that you and I and others in our working group have additionally interacted both bilaterally and multilaterally within the GNSO on this on any number of occasions. We've also taken the opportunity to ensure that [inaudible] [support] of GNSO.

Understand that this is not a matter of negotiation with us. It's a matter of us taking a best possible [inaudible] approach to ensuring—I'm sorry, I forgot I had one of my other lines running in the background, my apologies for that—to ensure that it is not imposing change on where the problem is but allowing the area that has the problem to come to a mutually agreed within their own space outcome and we're not imposing what it would be.

And also, I guess, it's important just to remind everybody that we also went to all sorts of extreme options on rebalancing as we worked through a hypothetical exercise of what may or may not work. So we went from being able to [inaudible] everybody in the ICANN community to this approach which is actually [inaudible] possible.

Thanks for the opportunity to comment. I'm sorry that I had that other audio going. I forget not everyone can put up with all that background noise like I can. My apologies for that. Thanks.

TOM BARRETT:

All right, thanks, Cheryl. I'll say one more comment and then get your reaction. I started off my career manufacturing jet engines back in the 80s. We were doing continuous improvement back in those days, and so I love the fact that ICANN is starting to adopt some continuous improvement types of approach rather than trying to do what we called a big-bang, holistic type of reviews.

So I think what we're trying to take is more of a continuous improvement approach. It allows us to move forward to let the community figure out will it do a holistic review across the board or will it just do a GNSO review or will it do something else? Our bylaw change related to rebalancing I think will facilitate that type of discussion.

PATRICIO POBLETE:

Well, thank you for your thoughts on that. And to be clear, what we want to make sure is that there's enough...you gather enough evidence of support for whatever changes you're proposing. As you mentioned, there is opposition to some of them. And so I suppose you had some way to measure the size of the strength of that opposition as compared to the strength of the support for what you're proposing. Do you feel that you've done enough in that direction?

TOM BARRETT:

Well, we feel like we have, but we're certainly open to trying some other things if there are some suggestions about how to explain what we're doing or get more support or try to...obviously, the squeaky voice is being heard today and the silent majority isn't, and so it's hard to gauge what percentage of the community is objecting to this. We certainly

know who is objecting, but we haven't tried to gauge a level of support, so to speak. And maybe that's something we could—any suggestions obviously are welcome—that we could try to do that.

PATRICIO POBLETE:

Well, I think we could go into the specifics now, starting as you were just discussing going deeper into Recommendation 10 about NomCom rebalancing. As you said, the recommendation is about rebalancing the NomCom now and then revisiting that every five years, and you've chosen one particular way of doing it. So in that sense, it applies what I was just saying about the fact that you are focusing on one particular part of the NomCom, the GNSO appointed members.

Do you feel you have buy-in from the rest of the SOs and ACs whose representation is not touched in this particular round, so to say? Are they well-informed and have you gathered evidence about them being happy, so to say, with doing it this way this time? Before going into whether within the GNSO there is enough support, do you feel that you've done enough about the rest of the community in that sense?

TOM BARRETT:

That's a great question. Jean-Baptiste, I don't know if you can bring up the NomCom org chart, so to speak. We had that as a reserve slide. And you're absolutely right. We can certainly do more in terms of providing some clarity to the community about what is being proposed for the bylaw change. It is unfortunate that the word rebalancing is in the recommendation because we're not doing any rebalancing. And that's, I guess, the part we want to make sure is crystal clear.

This is the current NomCom structure, and the NomCom structure will be the same after this bylaw change. So there is no rebalancing happening solely because of the bylaw change. I guess that's a point we want to keep hammering home because it's unfortunate that the recommendation has the word "rebalancing" in its title. In fact, that's not how we've implemented this recommendation.

As you can see here, you've seen this structure before for the NomCom in terms of who appoints to the NomCom. We're not changing anything in terms of the composition of the NomCom. All we're doing is saying those seven GNSO seats are not hardcoded in the bylaws anymore. So the GNSO can decide to not change a thing if that's what they want to do, but the status quo remains even after the bylaw change. Nothing changes.

And so that, I guess, is all we're trying to accomplish here. Let's just remove the hardcoding and let the GNSO when they're ready or when they're forced to figure out how they should allocate those seven NomCom seats.

We can certainly go to the other SOs and ACs to see how they feel about this—ALAC, ccNSO, etc. It really doesn't impact anyone else. I can't imagine anyone would object, but we can certainly go back and confirm that.

CHERYL LANGDON-ORR:

Tom, if I may? Oh, sorry, [Avri]. Thank you. We should also note to the OEC at this point that in the feasibility stage of these years of work since the recommendations were made by the independent examiner we

certainly interacted with the SOs and ACs. We interacted with all of the ACs and SOs and none of them are complaining about not being [inaudible]. Thank you.

TOM BARRETT:

Thanks, Cheryl. So I think part of this, and this is really\ I think something we'll have to continue to address with the community, is they see the word rebalancing in the recommendation and they think that there's some sort of rebalancing happening when we're simply suggesting to remove the hardcoding from the ICANN bylaws that dictates how those GNSO seats are allocated. So it's more of a communications issue, and unfortunately we're stuck with the language of the recommendation.

PATRICIO POBLETE:

Okay, thanks. Are there any comments from my colleagues in the OEC? Becky?

BECKY BURR:

Yeah, I have a question. And thanks for this. Some important clarifications here. So the point here is simply to take the bylaws issue out of the discussion and basically say to the GNSO if and when you decide rebalancing is necessary, you figure out what process you're going to use to do the rebalancing and that process results in whatever results it dictates. So this removes both process and outcome from the bylaws as I understand it. Is that right, Tom?

TOM BARRETT: Correct. So it gets back to our guiding principle of let's make the bylaw change lightweight and try to have the iteration or evolution happen outside the bylaws.

BECKY BURR: Okay, so there's one provision in here that calls for—with respect to the bylaws change—that calls on the Board to evaluate the proposal prior to the public comment. Is that right? Have I understood that correctly?

TOM BARRETT: You're asking me, Becky?

BECKY BURR: Yeah.

TOM BARRETT: So again, the way it's been understood to me is once we propose bylaw changes it's kind of up to the OEC to drive that process. We're obviously here to support it. But one of the big points of clarity the working group is looking for is what role do you want the working group to play with these bylaw changes.

BECKY BURR: So one point I think is that the bylaws dictate the bylaws amendment process. So at a certain level, the mechanisms for proposing bylaws changes and the mechanism by which bylaws changes are made is also

established by the bylaws, and that's a fundamental bylaws provision. So it would be difficult to change that particularly in advance of it.

And so I think the role of the working group is determined by the bylaws. The bylaws have...you know, the groups that can propose [them] are determined in the bylaws and the way that happens, the way they're considered when public comment is called and all of that kind of stuff is determined by that. So I think that's a pretty cut-and-dried piece of work here.

So I think your point about the communication issue is really important because I do think that there may be confusion about what the rebalancing is and what particular roles different parts of the Board...the Board and different parts of the community would have. I think this is a fundamental change. I understand it now, and I really appreciate the explanation, exactly why you're taking the approach that you're taking.

One question is just how the GNSO would come up with the mechanisms for doing that, but I think we would probably just need consultation with the community to understand if those mechanisms are in place or if that is something that would have to be developed as well.

TOM BARRETT:

Right. So again, our strategy is...you may disagree with our approach, but we feel like that process should be handled outside of this review. Handled by the GNSO in this case, and we simply want to make sure...I think the pushback we're hearing, if I can summarize it, is let's do the

review first before we change the bylaws. I think that's the resistance you'll get. Either let's do the ATRT3 holistic review. Because this is much bigger than the GNSO, let's just do the GNSO review and then figure out what bylaw changes you want to make.

So that is what I call the big-bang approach as opposed to a continuous improvement approach. So again, we're taking the continuous improvement approach. Go ahead.

BECKY BURR:

Yeah. No, I mean, I see what you're saying, Tom. I definitely understand. What you are doing is proposing to clear the way for change. You're not proposing the change itself, but you're putting the things on, setting the table for that to take place at some other point.

I think probably what people are saying, and this does relate to the communication issue, is we should the holistic review before we change the composition of the NomCom as opposed to changing mechanisms that are established by the bylaws.

In any case, you could do it before, during, or after, but the issues are independent. I understand what you are saying now. One is the bylaws now hardcode this and make change every five years or rebalancing every five years difficult because it requires a bylaws amendment which is intentionally designed to be a difficult and slow process and to require the consent of all parts of the communities. Whereas, you're making the argument that this is a GNSO issue and the rest of the community doesn't necessarily need to be involved in a decision about how the GNSO seats are allocated.

TOM BARRETT: I think that's a good summary. I see a hand up from Matthew.

MATTHEW SHEARS: Yes, thanks. And hi, Tom, Cheryl, and everyone. I appreciate the opportunity to meet with you. Just on this very point, maybe I've just missed it somewhere. So you're removing the hardcoding on the GNSO number, the seats [let's say] and the way they're allocated. But have you suggested a timeline by which those seats would be either confirmed as staying as they are or they would be changed? Because, obviously, with the NomCom process on an ongoing annual basis I would suspect that if you're anticipating change, you'd want it well in advance of one of those sequences, if you will, of NomCom. So how have you accounted for that?

TOM BARRETT: Good question, Matthew. The short answer is no, we haven't specified a timeline. There are other recommendations, however, where we have thought this through. So for example, one of the recommendations goes from one-year terms to two-year terms. And we want to stagger the group so that only half turns over every year, and so we have identified a transition for that to occur.

What's interesting is this kind of relates to how the GNSO might transition here as well. The ALAC has five seats currently divided geographically on the NomCom. So as part of our transition plan, we haven't specified North America will go first and then Asia. We said the

ALAC will decide as part of that transition how they want stagger their seats. And so we would say the same for the GNSO. When they figure out a different way to allocate the seats, they can also decide how to transition those seats.

PATRICIO POBLETE:

Well, thanks. I'm conscious of the time, so we should move to the next point which is about Recommendation 24 that has to do with the formation of a new body to give some continuity to the work of the NomCom. I'll ask Matthew to champion at this point to speak about this topic.

MATTHEW SHEARS:

Thanks, Patricio. This is a really interesting development. It would be great to get your sense as to the, I guess, what I would call...the intent of this I understand initially was that this would provide this kind of continuity from NomCom to NomCom. In developing the charter for the standing committee, has the extent of that, those responsibilities, broadened or have they remained relatively within the original remit?

TOM BARRETT:

I'll answer that question, and obviously other folks from the working group can chime in as well. There are several aspects here. One is continuity from year to year. Two is building the institutional memory of the NomCom so they're not reinventing the wheel every year. And the third really has to do with accountability and transparency about what the NomCom is doing.

As we thought this through, as I said earlier in my earlier comments, today if you want to figure out what the NomCom is doing you can look at the ICANN bylaws, of course, and then you can look at something called the NomCom operating procedures. If you read those procedures, the audience of those are really the members of the NomCom. They're coming in fresh. They're not familiar with what Board governance is and what it takes to select these kind of folks. So it really guides them through their annual NomCom process. [And there's normally] some revisions we're going to do to that to reflect what the recommendations are.

But then there are all kinds of administrative procedures that are mainly done by ICANN Org that are not really mentioned in those operating procedures. And so a good part of the standing committee's charter is really addressing all these business processes and administrative processes that are done by ICANN Org staff, not just the NomCom support staff but also other departments within ICANN that is not transparent to the community.

And so that is why we see two guiding documents. One is the current NomCom procedures which just helps the NomCom members do their job. But then all these other business supporting processes that really make the NomCom become more efficient.

MATTHEW SHEARS:

[You got me a little bit interested there.] May I ask a question, Tom?

TOM BARRETT: Yes, please.

MATTHEW SHEARS: Could you tell me about one of those processes from ICANN, other ICANN support functions [done on the part of the NomCom] which is not transparent? Could you give me an example?

TOM BARRETT: Sure. Well, it's not so...some of the recommendations from the IE report have to do with, for example, getting feedback from the receiving bodies about past NomCom appointees and how does that feedback come back to the NomCom, especially for appointees who are reapplying for their position.

So in the past, it has been done at cocktail parties or very informal discussions, but there's no systemic way for the NomCom to get feedback saying are you selecting good candidates for that receiving body and, if not, why? Why did you pick this person, why were they not a good fit, etc. So that's the sort of process that's not transparent today.

MATTHEW SHEARS: Yeah, but that's not an ICANN Org department doing a nontransparent process.

TOM BARRETT: Well, I think it's not built into the NomCom DNA.

MATTHEW SHEARS: The reason I'm asking is because I'm quite interested, and I'm not trying to be unpolite and we can take it offline. But you specifically said there are other parts of ICANN Org who support NomCom, other departments, in a nontransparent way, and I'm very curious to know what you're thinking about in that sense.

TOM BARRETT: So if we go through, we start with the budget process. Again, as you know, that's always a year in advance from the current NomCom leadership. So they're always...if you read the IE report, the NomCom budget in the past has been handled by NomCom staff because there are no standing NomCom people to interact with when they propose a budget because it's always for a future NomCom.

MATTHEW SHEARS: So maybe I can [bring a light then.] The budget is one of the most transparent things ICANN does according to the bylaws because the Empowered Community has the possibility to revoke the budget. And the NomCom budget is a part of the overall budget. I'm thankful for clearing that up that you don't think that's nontransparent.

TOM BARRETT: In fact, I'm on the GNSO standing budget committee, so I absolutely agree with you. It's completely transparent. But at the same time, there's no body that is looking at the NomCom budget, so to speak, from the community saying here's what we think the NomCom budget should be this year. So that's [handled by] NomCom staff.

MATTHEW SHEARS: No, it's handled by the ICANN community budget process where everybody has an ability to have a weigh in on also about. We would expect that if former NomCom members had views about budgets, they would use that experience to make comments. I don't think I ever received any comments about NomCom finances in the budget process so far.

But let's agree that...do you have other examples of things that you think are not transparent? Because this is important to me because I am very surprised about that comment and, therefore, I sort of drilled down on it.

TOM BARRETT: Yeah. So if you...some of the other processes are, again, how the appointing bodies are selecting their NomCom appointees. So there's recommendations on job descriptions for filling the NomCom and making sure that's...and more importantly there's the idea that there need to be job descriptions for the receiving bodies. It's been inconsistent according to the IE report in the past. And so I know in the years I was on the NomCom, we were hiring a recruiting agency, an assessment recruiting consultant before we even had a formal job description for the openings they were trying to fill. And so part of our....

MATTHEW SHEARS: You mean that other ICANN support staff who support other ICANN parts helped their parts to make their deliberation. Is that what you mean? Because David Olive's team who supports policy, he helps. For instance, if the GNSO wants to do something, they support the GNSO with doing that. Is that what you mean?

TOM BARRETT: No. I don't know if David Olive is the right person. Again, I don't know who would support the SOs and ACs within the GNSO in terms of defining....

MATTHEW SHEARS: I'm sorry. That's our policy support staff who does that.

TOM BARRETT: Right. So this isn't really a policy issue as opposed to....

MATTHEW SHEARS: No, no. But if a policy body makes, for instance, job descriptions [as you] mentioned which means that if the [inaudible] engagement in that in supporting that part of the community to come up with something. It's not like ICANN Org does it by itself [inaudible] support for the ICANN community.

But maybe we should take it offline, but I was really interested when you said that there are other parts of ICANN Org who do work for the NomCom in a nontransparent way because that's the sort of thing that I

have to look into very carefully. And I can say for the group and for the record that I can't see that's actually is happening at all.

TOM BARRETT: So I would look at it from the perspective if you go to the NomCom website [inaudible] ICANN.org and look at this year's NomCom or last year's NomCom, it focuses on what the NomCom members do but does not discuss what ICANN Org does outside of the NomCom support staff. And that's...when we're talking about transparency, we're talk about there's no visibility just within the ICANN process itself about other processes that are taking place.

MATTHEW SHEARS: There are no other processes. That's my point. We do support the NomCom.

TOM BARRETT: Well, there's a ton of processes.

PATRICIO POBLETE: If I may interrupt, I think we're getting a bit far from our main concerns here. I suggest you might continue that discussion offline so we can move to the rest of our agenda. Are you okay with that?

TOM BARRETT: Okay. Yeah, I'll follow up. I think these are good questions. I'll try to articulate it better.

MATTHEW SHEARS: Yeah, thanks, Tom. Yeah, Patricio, yes. So just another thing that has kind of popped out at us as well which we wanted a little bit of clarification around is that at one point you mentioned an interim standing committee, and I don't think we really got any kind of sense as to how that would be constituted, for how long, and what it would be doing. So I think it would be helpful for us to understand what the intent is there. Thanks.

TOM BARRETT: Absolutely. So the standing committee, the composition certainly is intended to be comprised of former NomCom members. We do envision that members of our working group will basically consist of that standing committee. So that's probably where it's going to be initially populated until we can get a formal process in place.

And so, for example, for the midyear report we would like to generate an update of not only the NomCom operating procedures but an update of the standing committee operating procedures, and that's kind of our midyear goal so that we can have that standing committee starting to perform the function that we envision for it.

MATTHEW SHEARS: Thanks, Tom. And then if I may just one final one which is it seems just kind of walking through the process and all the steps that are going to occur that a couple of the steps where we had anticipated the Board playing a role have been removed from that implementation outline.

And there's another point in there where it says that the Board will put the new body in place, i.e., through bylaw change and approval of the standing committee charter, including additional public comment. What's the sequencing there? Because I think it would probably where you say including additional public comment, how will that work from a sequential perspective?

TOM BARRETT:

That's a great question. In doing these bylaw changes, we originally had one to talk about the formation of a standing committee for the NomCom. And partly because of feedback from ICANN legal and our own deliberations we decided to not have a lot of new clauses in the bylaws that address the standing committee. And so again, that approach was taken to make the bylaws somewhat lightweight, and we had this charter instead.

But I guess in our discussions we're hoping that OEC would follow the same process for getting implementation of the charter as it does for a bylaw change. We almost see them following a very similar process. So that's why, again, it comes back to what role do you want us to play. We see the charter as almost like standing in for the bylaws in terms of how do we get community endorsement and make this a standing body that, even though it's not in the bylaws, will still carry some weight from year to year.

MATTHEW SHEARS:

Okay, and just one final issue. Obviously, because of the parts where we were to have had a role in discussing some of the governance issues

around the charter and other things, are there any particular issues, governance related issues, that the OEC should focus on at this point in time? Particularly with regards to the standing committee and how it's constituted and its responsibilities.

TOM BARRETT: Nothing comes to mind for me. I think the charter is pretty clear. I don't have much experience with the other standing committees within ICANN in terms of how they decide how to appoint members and fill vacancies. For example, I think it's fairly weak perhaps in terms of how it fills vacancies, and that could be strengthened. But I think we're open to ideas if you don't think the governance there is strong enough within the charter. We're looking for that kind of feedback.

MATTHEW SHEARS: Okay, Tom. Over to you, Patricio.

PATRICIO POBLETE: And now there's [inaudible] Recommendation 27. There are some [inaudible] that we need, and I'll ask Danko to speak on that.

DANKO JEVTOVIC: Thank you, Patricio. And many thanks to the implementation team for doing this. I will speak about Recommendation 27. And I believe that OEC understands the reasons for this recommendation and also the reasons why you tried to change this term independent to unaffiliated. I'm not a lawyer, but in a different domain of my life I'm also involved

with corporate governments. So there is this special legal meaning to the definition of independent, especially in California of course but in general.

So we from the OEC suggest that the review implementation working group [inaudible] on unaffiliated directors requires significant clarification and considerations how to propose this change exactly because some unintended consequences might arise in the future. We would like to have a developed, clear, and [better] definition of this term so that it can be used in line with community expectations and, of course, with government standards. We think that the team might benefit and probably should engage ICANN legal in this definition, including [articulation] how this definition might be changed in the future.

I was thinking about possible unintended consequences while reading the recommendation in your paper. For example, one of the examples that I have in mind is that if an unaffiliated person applies to the NomCom and is funded by ICANN to travel to meet [with] the NomCom, [it has to] receive the money. So if it's not selected, for example, in this case, next year it will not be able to apply because has received money for travel from the ICANN.

So this we believe is quite sensitive and we want to try to help you and also to signal it's not just you don't have to replace the term but it needs to have definition that will be clear of any confusion and how to do this better. So we believe this is [also significant]. Thank you.

TOM BARRETT:

Yeah, thank you for those comments. I think we're on the same page there as well. Again, we followed our guiding principle here where the bylaws have just one or two sentences saying the NomCom shall appoint unaffiliated directors. It doesn't even try to define it within the bylaws. And so that allows the definition to be outside of the bylaw process [and] in those two operating procedure documents.

I mentioned earlier—and we can get into issues like if they get...what level of financial reimbursement rises to the level of becoming an ICANN...have a conflict of interest as an unaffiliated director. And so that's why if you were able to attend our pre-ICANN webinar, we actually did a temperature taking of the audience to try to ask that very question. What is considered enough financial compensation that it rises to a level of disqualifying someone as being unaffiliated?

So I think I agree with you. That's going to [inaudible] continue to be tweaked and evolved, which is why we've kept the ICANN bylaw change very lightweight, again. Just saying this should be unaffiliated directors, and the details as you mentioned are outside of the bylaws and in these other operating procedures documents.

DANKO JEVTOVIC:

Well, being a nonlawyer I understand in creating bylaws and similar documents you can be very detailed and [prescribe hopefully] within a more general sense. But in a way how we do it in ICANN is more detailed and more prescribed than you could expect in a general corporate governance. So probably the opinion and the feedback from the OEC side is that if you leave it so undefined, it will create another layer of

problems. So it's not just enough that we switch the term, then we are using a term that is not filled with a legal meaning in California of regulatory environment, but to where we are using a different term that can be interpreted differently and that will create [inaudible] changes.

TOM BARRETT: Okay.

DANKO JEVTOVIC: So having in mind the intent of the recommendation I believe is good, it needs really more clarity on the implementation [inaudible].

TOM BARRETT: All right, that's helpful. So in terms of next steps, what would you like the working group to do?

DANKO JEVTOVIC: Well, I believe that in this particular recommendation, the working group can benefit from the direction with ICANN legal because it's specific from the California environment and try to create the definition that will be precise enough and usable enough. And also, your exercise during the webinar was very welcomed and I think beneficial, but it will need real testing, sort of stress testing, to see how this definition can...what kind of consequences are possible.

TOM BARRETT: Yeah, okay. Yeah, we'll certainly do that. I mean, ICANN legal has weighed in, but maybe another look at it will be helpful.

DANKO JEVTOVIC: Okay, thank you.

TOM BARRETT: Thank you. That's great feedback. So what about the other recommendations or overall? What else? What would you like the working group to do in terms of helping you through the bylaw changes or the charter process? What role do you want us to play?

PATRICIO POBLETE: Well, as I was the first to address one of the worries, I will speak now and then ask my colleagues if they have something to add about the specific topics that they covered.

But for what I said at the beginning, I would expect the working group to provide us with evidence of the support that the community has on the various changes that the working group is proposing and that those changes have been made transparent to the community and highlighted. That would be very helpful when we have to do our duty of oversight on the work of the committee.

Any comments from other members of the OEC? Avri?

AVRI DORIA: Yeah, hi. I just wanted to quickly point out it may have been said earlier but I want to reemphasize it anyhow, that when it comes to the bylaw changes they will—before the Board even touches them—they will have to go through a full community review in the process for [Board]. So I think it's probably a good idea to feel fairly certain that you do have the evidence and the support of the full community and don't get stuck on one particular view or another.

But I just wanted to make sure what you knew that the process was. And if we go as we've been going, they'll probably be grouped together. In other words, we won't probably be going one bylaw change, then another, then another, but it will probably done in some form of set. Thanks. I just wanted to say that. Thanks.

PATRICIO POBLETE: Thanks, Avri. Cheryl, please go ahead.

CHERYL LANGDON-ORR: Oh, thank you. I was just queuing myself, but thank you, Patricio. I appreciate coming to me out of order.

PATRICIO POBLETE: I saw you signal after Avri.

CHERYL LANGDON-ORR: No, that's...come back to me if you wish. But what I was just going to say is delighted, first of all, to hear as we had hoped that there was

going to be the normalcy of course of all of the preparation for any bylaw change. We expected that. And that we believe is not our job, although we will facilitate and aid it wherever possible.

Regarding the metrics you're asking for, we can certainly with the aid of our terrific support staff look at what we have done to date. But none of that will influence the recommendation itself because that was the public consultation done by the independent examiner. We need to constantly remind ourselves in this working group that our role is to implement what has been approved in the most visible and practical way possible. So regardless of the numbers, dare I say, [inaudible] in a support organization that has shown many concerns [for example with Rec 10] but there are other contentious issues as well I've no doubt. We can certainly get that data to aid in that community understanding. Perhaps, Tom, we want to make an action item to look at that as an update item in our midyear report.

TOM BARRETT: [inaudible] absolutely.

PATRICIO POBLETE: Okay, thanks. We're almost at the top of the hour, but Matthew?

MATTHEW SHEARS: Yeah, I just wanted to say thank you very much to all of you for this time. And what I was going to say actually is Lito beat me to it in the chat. He said I expect that we'll come back with more questions, particularly around [inaudible] the legal review. Probably a little bit more questions,

a few more questions around the standing committee and maybe the issue of independent versus unaffiliated. But really appreciate the time and thanks for the good discussion.

PATRICIO POBLETE: Okay, thank you, Matthew. Okay, so I'll give the meeting back to Avri now.

AVRI DORIA: Thank you. Thank you, Patricio, for taking the lead on this. Thank you, Tom, for taking us through the points of view. I very much appreciated the discussion, and I hope that it continues. And if we need further of these discussions, we could certainly plan them. We hope that people don't keep working in the fear that something is going to come down but discuss it when the questions come up. So please let us know if there are further issues you want to follow up, which would be one of the next steps. If after you discuss this you say, "Oops, we need to understand this," please let us know. And thank you.

TOM BARRETT: Well, thank you all. It has been very productive for us. We'll certainly debrief at our next meeting and figure out what we can do to address some of your questions.

AVRI DORIA: Thank you very much, and good rest of the time. Stay well, everybody.

TOM BARRETT: Thank you.

[END OF TRANSCRIPT]
