
ICANN71 | Virtual Policy Forum – ccNSO: Members Meeting Governance Session
Tuesday, June 15, 2021 – 09:00 to 10:00 CEST

KIMBERLY CARLSON:

Hello, and welcome to the ccNSO session at ICANN71 on Governance. My name is Kim Carlson and along with Kathy Schnitt, we are your remote participation managers today.

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And with that, I'll turn the call over to David McAuley, the chair of the Guideline Review Committee Subgroup on the ccNSO Rules. Thank you.

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DAVID MCAULEY:

Thank you, Kim. Hello, everybody. As mentioned, my name is David McAuley. I am a member of the Guidelines Review Committee. I have been for some five plus years now. And as you know, we have been discussing over the last several ICANN meetings the issue of whether we should, and if we should, how update the Rules for the ccNSO. This was discovered in our work in the Guidelines Review Committee that the Rules which were adopted in 2004 and there have been changes to the Bylaws [inaudible] obsolete, it's just sort of organically naturally happened that there have become developed mis-references in the Bylaws and some disparities in the way that we've come to operate and the way the Rules are written. And so the issue was should we address the GRC, came to the larger community and said, "We think it would be a good idea to update the Rules."

This is the third session in a row in ICANN meetings. We started at ICANN69. The first two sessions were very well led by Chris Disspain. At ICANN69, we identified the issues that we actually do have—not a problem but we do have what I would say is perhaps a need to update the Rules and we identified how that might be where they may be a need for update. At ICANN70, we became a little bit more particular in that, developed that line of thought.

Following ICANN70, there appeared to be a community interest in getting a smaller group of the GRC to focus on the Rules. A subgroup was formed with some very capable people, including some founders of the ccNSO. And I have been chosen to chair that group and we've been working on that. And here at ICANN71, we'd like to come to you

with a number of questions, etc. and take us further. And I'll explain in just a moment, but what the view is to wrapping this up.

Keep in mind two things. One is the hierarchy of the governance provisions for the ccNSO or the Bylaws are at the top. That's really talking about Bylaw Article 10 which is about the ccNSO Bylaw Annex B, which is about ccNSO Policy Development Process, and Annex D, which addresses the ccNSO as a member of the Empowered Community Decisional Participant.

The second thing to keep in mind is that there will never be a change to the Rules that does not meet the threshold of the current requirements to change the Rules that is contained in Section 8 in the Rules.

And so today our goal is—the Rules Committee has brought this forward sort of distilled the thinking that we've found in the last two sessions, and we'd like to come to you with a series of questions. We're going to be doing some polling. And our view is to use the information that we get today, together what we will probably come to you with a survey following this meeting in the next several weeks, and the purpose of that will be to more particularly get at how these changes may look. But that also will serve bringing this issue particularly to all members of the ccNSO, including those who are unable to be with us at this meeting. And this will be done with a view to at ICANN72 showing you a draft of the Rules with track change mechanism pointing out what we think the changes would be. And

keep in mind again, none of that's going to happen without meeting the threshold for changing the Rules that are currently in the Rules.

So I would like to say thanks to the members of the Rules Subcommittee. They are listed in the e-mail that was sent on my behalf late last week. I'd like to thank them and the members of the Guidelines Committee who have sort of helped us along in this process. And without further ado, we might get to the slides. If we could go, Kim, to the next slide.

This is simply what we determined that governance—we determined this when we first started this at ICANN69 that governance is a collection of mechanisms, processes, and relations used by membership, Council, and others to control and to operate the ccNSO. Next slide, Kim.

The goal is to update the 2004 Rules. You'll see that one question we have here at the end is should we have a regular mechanism to address this rather than wait as long as 16 or 17 years to do that, but to bring them up to date to make sure that Rules be practiced and practice meet Rules. Next slide, please.

This simply shows what I've just stated, starting at ICANN69 and coming up to today's session with a view towards ICANN72. And then we'll get to the next slide, Kim, and here I'd like to ask Bart to step us through some of the information we want to poll you about, then we'll look for a queue or responses to the poll. So far if I can hand it over to you to just start stepping us through some of these materials.

BART BOSWINKEL:

Thank you. Welcome, everybody. Hello, everybody, not welcome, everybody. What we'll do is we'll run through the main topics that the subgroup thought they needed your feedback on, whether or not to include in the updated version of the Rules.

One of those I would say topics is the principles that were developed prior to 2004 as a starting point for the ccNSO. And those of you who have attended the previous sessions from the GRC know these principles have been part of the discussions for quite some time. At the time during these previous sessions, people more or less agreed to include them, but the subgroup thought it might be very useful to check again with you and now in a little bit more formal way through the polling, whether or not to include it because this will drive the drafting sessions and you better make sure that you start drafting on what people really, really want to see in them.

As you can see, there are seven basic principles and the role of the principles is—one is to guide interpretation and further development of the topic. Just to ensure that the core thoughts of decision of Council members, etc. are captured. That's the goal of the principles. I will not go through them one by one. They've been discussed recently and they've been updated slightly. For example, you can see a reference to virtual meetings. That's I think what I wanted to say about the basic principles. Back to you, David.

DAVID MCAULEY: Thank you, Bart. Thanks again, Bart. When we come to you and show you the new Rules drafted as the Rules currently appear with track changes to allow you to follow, this will be a complete track change at the beginning of the Rule showing the inclusion of a new section, stating the principles that were used when the ccNSO was founded. So the poll question is would you support including the principles in the membership Rules? Kim, if you could start the whole process.

BART BOSWINKEL: As an explanation, everybody on the call can submit a response and we'll give you 30 seconds to do so. I will display the response. Thanks.

DAVID MCAULEY: Thank you, Bart. While the poll is going on, let me ask if anybody would like to join the queue with any questions about this, any concerns? This one may be one of more easy ones that we have. Kim and Bart also mentioned that while we're doing this, I probably won't be following the chat as closely as I normally do. So if something comes up—

BART BOSWINKEL: There is a question from Peter Koch, "What is meant by 'including in the Rules' as a preamble?" It will be part of the Rules, as you will see, if we touch upon the next item which is subject to change by the members. There will be in other elements the explanation part of the introduction that David just mentioned, which is just a description of the relation between the various documents. So the principles will be

subject to changes by the members. So if that's what you mean by preamble. It's a preamble. That's what we mean by included in the Rules, if you agree that it will be subject only to the change by the members. So the Council itself can't change this anymore. That's the intention. Does that answer your question, Peter? Thanks.

So there was one "no opinion," I believe. So I think in general, people do agree with including this in the principle. Maybe the person or the persons with no opinion want to explain why they have no opinion.

DAVID MCAULEY:

This brings up a good point, Bart. We're going to be using the list, not only for the survey that I mentioned that will follow, but also as we come with drafts and things like that. So there's one more instance where we're going to urge people to actually use the list. If those who expressed no opinion on this have strong feelings, sounds like they don't, but if they would have something that they want to share on list, that's certainly welcome too.

BART BOSWINKEL:

I see a response from Charles that he was late. Kim—thanks for your responses. So this was a warm-up question—can we go to the next slide, please?

So again, as David said, we're going to talk through, each slide will have a specific topic. This is the change mechanism for membership Rules.

Currently, only members can change the membership Rules. And we'll catch up on that later as well, but there is a threshold of how many ccTLD managers have to vote and participate in voting, etc., but in principle, only members can change the Rules at this stage. So that's why it's stated, I would say, succinctly.

The subgroup proposes and GRC proposes that this basic change mechanism should be included in the amended Rules in future as well. Maybe not with the same threshold, but in principle, only members can change the Rules. This distinguishes and will distinguish the membership Rules from the Guidelines, so this is purely under the control of the members.

So my first point is, are there any questions on including this change mechanism for the membership Rules? So members only can change the membership Rules. Are there any questions? I don't see any hands up or anything in the chat.

DAVID MCAULEY: Bart, I'd like to make a comment.

BART BOSWINKEL: Go ahead.

DAVID MCAULEY: I'm not going to be able to follow the chat all that closely, but I do see Harald Alvestrand. Thank you very much, Harald, for your comment of being a visitor. I think it would be wise to ask visitors to refrain from

answering the poll. If anybody thinks that's incorrect, you might want to comment. But I appreciate point, Harald. I think that's something I should have made clear.

So what we're trying to do is get the feedback from the ccNSO membership on this, the ccNSO members be assured that we will also be doing the survey that I mentioned. We'll be discussing this on list, and again, nothing's going to change that doesn't meet the current change requirements. But that's a good point that you made, Harald. Thank you very much for that.

BART BOSWINKEL:

We do have two questions in the chat. One is from Svitlana and one from Peter. So what are the alternatives? Who else could change the Rules?

You could argue that the Council should be able to change the Rules, just the Council itself. By a simple majority vote of the Council, the Rules may change whenever they wanted to. That's the extreme. I know this is the extreme. So you can see, there are alternatives to these membership Rules. And the change mechanism could include, for example, a super majority, a quorum or 50% or even 66%, again depending on the preference. So they're more or less build in to some concrete. So, once you adopt them, you can hardly ever change them, and this is one of the reasons why it took so long to review and look at the 2004 Rules. That's where we are.

And I agree, Stephen, that this is a dangerous position. But that's why now we're at the poll. Do you agree that this should be included? The change mechanism that members only you can change the Rules, should that be included in the Rules itself? So they're under control. All the members and members only, please vote.

DAVID MCAULEY:

Thank you, Bart. I'll comment on one other comment I did see in the chat from Eberhard that this is really just a temperature of the room. I think that's a very fair comment. It will help us in the Rules subgroup to move this forward. And it is a temperature of the room, and the room being ccNSO members. Thank you.

BART BOSWINKEL:

Thank you. We have one opinion and one no. Could the person who—and if you're not willing, that's fine—but if you think this should not be included in the Rules, could you be so kind to speak to why do you think this change mechanism should not be included? Or type in the chat. If not, the members. So that's Leonid I just mentioned. The Council only. And we'll touch upon that in the next item. Leonid, were you—the person who voted no, can you speak to it? I don't see any response then we'll move on. We will note there is one no.

DAVID MCAULEY:

That person will always be free to express their opinion. So we should move. Thank you, Bart.

BART BOSWINKEL:

So let's move to the next slide. So this is your alternative, for example, Svitlana and Leonid. This is about changing the Guidelines or as they're called in the Article 10 of the Bylaws Operational Procedures. We will want to stick to that name, the separate ones to stick to the name Operational Procedures in future as much as possible to align the Guidelines and the documentation we should use to describe the governance of the ccNSO with the Bylaws.

Currently, this mechanism around Operational Procedures is not included in the Rules but the working group or the subgroup thought that it might be useful to include and to ensure the point of transparency that has been made and accountability that even if there are Operational Procedures that the membership only always knows they have to follow a certain pattern. So it is documented and it is documented at the level that only the members can change this.

So again, I hope you have a chance to go through it. So there is the draft, then it will go for public consultation, membership consultation, and finally, the Council will adopt a new Guideline and/or updated version of the Operational Procedures. You see the reference to the Bylaws Section 10.4(k). So this is the alternative, for example, to the Rules. Any questions?

KIMBERLY CARLSON:

Bart, this is Kim.

BART BOSWINKEL: Yeah, go ahead.

KIMBERLY CARLSON: Before we vote, the polling options are not what I had wanted on here, so can we for at least this one use the green check and red Xs for this one?

BART BOSWINKEL: Yeah. We'll do it then. I see some comments in chat. "Not directly related, but it's worth noting that the 2004 would appear to be the founding constitutional document of the ccNSO as was decided in the transition." Thanks, Nigel. Eberhard, go ahead. You're on mute, Eberhard.

EBERHARD LISSE: Can you hear me now?

DAVID MCAULEY: Yes, we can.

BART BOSWINKEL: Yes, we do.

EBERHARD LISSE: Okay. Plug issue. I'm not sure I understand what you're trying to say here. My problem is that, for example, we changed the way of how we recommend or we nominate a person to the ICANN Board by way of a

Guideline which was done by Council. Are you trying to say that the Guidelines should have a public comment and only be adopted by Council if the members vote for it, which is my preference?

BART BOSWINKEL: What I'm saying when there is a Guideline, no matter which Guideline, it has to follow a certain process, which is currently not documented. And this is the current process and procedure that is followed to change Guidelines.

DAVID MCAULEY: Eberhard, that's my understanding as well. It's not to necessarily document your preference. It's simply to document how the GRC had been operating to make a reference in the Rules to it and to document it. But the change mechanism for documents would pretty much be the same.

EBERHARD LISSE: I'm not sure I understand this. I actually do not understand what you're trying to do here.

BART BOSWINKEL: What don't you understand, Eberhard?

EBERHARD LISSE: You're saying we are making a change to—I really don't understand what you're trying to say with this slide. Either we are saying

Guidelines must be adopted after consultation and vote by the members or not but saying we must—what are you saying here? I don't understand this.

DAVID MCAULEY:

Let me try this and then I'll look deeper. But I think what we're trying to do here, Eberhard, is say that with respect to the Guidelines Review Committee and the way that it's been operating—and it's not been documented—we're trying to say let's document in the Rules that there are Operational Procedures [inaudible] Guidelines. And the way that they change, that's not going to change, but it will be documented in the Rules. And so that the way that the GRC operates and runs, that won't change, but without meeting the Rules requirement. But internally the way that the GRC has been changing or modifying Rules will remain consistent what's in the—

EBERHARD LISSE:

The problem I'm having is that changing of the Rules requires the policy development process type of thing, consultation and voting by the members. And the Guidelines are being used to do not just operational but also major things. And whether you document how this is done is a separate issue. We must document properly what the difference is between guidelines and policies, and then we must discuss whether we feel that Guidelines should go through the same process as Rule changes.

DAVID MCAULEY:

So if I could respond, Eberhard. I think you're raising a very good point, Eberhard. That is, it needs to be clear how the Rules work and how the Guidelines for Operational Procedures work. What you're telling me is we've not been as clear as we should be, and I think we can correct that as we move forward. But in order to move forward in this session, I think we would probably need to get past this now just with the notation that what we're trying to do is to document the fact that there is a GRC and it operates along certain internal procedures. So if you have anything to add to that—but I think Eberhard's point is a good one. It's incumbent on us in the Rules group to become more clear and to be more clear on the list as to what this is getting at. But I think we could still poll on this unless anybody objects.

BART BOSWINKEL:

Yes. I do understand the confusion in a way. At the same time, what this is about is, first of all, do you have a change mechanism for Guidelines, which whether you're right or wrong doesn't matter, but you foresee a certain change mechanism for Guidelines. The question is should that change mechanism be documented in the Rules? Yes or no. That's what this is about. Should we include the change mechanism for Guidelines, which is different from the change mechanism of Rules in the Rules themselves in order to allow the community to understand how this works. However that change mechanism may look like, that's the next question.

I see Chris was first, I believe. Chris, go ahead.

CHRIS DISSPAIN: Hey guys, sorry. I'm actually outside walking for my morning exercise, listening to this. I swore I wasn't going to say anything, but of course, I couldn't resist. It strikes me that actually this is the first step and exactly what Eberhard wants to achieve. Whether he'll succeed in achieving it, I'm not sure. But you have to have a reference to the Operating Procedures currently called the Guidelines in the Rules in order to ensure that mission creep of the Guidelines or the Operational Procedures, if you'd like to call them that, can't happen without the consent of the members. So this first step, if you agree, or putting them into the Rules and referencing them and making them part of the Rules is, I would argue, a critical first step on the path to ensuring that the Operational Procedures are operated in the way the members want.

BART BOSWINKEL: Thanks, Chris. Nigel?

NIGEL ROBERTS: Thank you. I just unmute. How do you get my audio?

CHRIS DISSPAIN: You are unmuted.

NIGEL ROBERTS: Yeah, right. Thank you for that. A couple of things. I'll just add my two pennies to the confusion. I think what we're scratching around here is that there are two different things that are involved. One is the

mechanics of how you make a change to the Rules or to the Guidelines or whatever. But the more important thing that's not being discussed is what belongs in which, and I think ICANN hear some concern from various quarters about what belongs in which and that there is some severe unclarity about that.

But I disagree that you actually need a reference to the Guidelines in the Rules of the ccNSO, which although it's our constitutional document, is within the context of the ICANN Bylaws. The Guidelines are referred to in the ICANN Bylaws specifically. So all you need in the 2004—or should we call it the 2021 Rules—is one sentence, which says that the ccNSO has Rules under Section 10 dot ... I can't remember the exact sub paragraph. Somebody, probably Stephen will tell me. I can go look. I don't think we need to dwell on that part because it's already covered. It's in the ICANN Bylaws Article 10. Thanks.

BART BOSWINKEL: Yes. But there is no mechanism to change it in the Bylaws. So you need a mechanism to change them.

NIGEL ROBERTS: If they refer to in the Bylaws, the mechanism to change them needs to go into the Bylaws, not into something else.

BART BOSWINKEL: Okay.

DAVID MCAULEY:

Thank you, Nigel. I think the section you're talking about is 10.3(k). That's a reference where the ccNSO Council subject to membership direction leadership [inaudible] to make Rules and Operational Procedures. I tend to agree with Bart and to disagree with you, Nigel. I think it would be advisable to have a change mechanism for the Guidelines and to make it clear, which is what we're trying to get at here. We haven't been as clear as we should be. But I still think this could be hold on whether we should address the Guidelines or the Operational Procedures in the Rules. If there's support for polling, I think that we're trying. I'm interested in what you think, Bart. But in one way or another, I think we need to move on to the next item. So, Bart, what do you think?

BART BOSWINKEL:

I think we could move on. We've documented or we've heard the concerns, we can run on this. Because these are the change mechanisms is the starting point to distinguish the two, the Operational Procedures and the Rules. I think, as Eberhard said, it's more important to understand what would go into Guidelines and/or the Rules and how they relate to the current Rules than anything else. Because this is just trying to make a distinction between Guidelines and Rules as a starting point, and then you start discussing what goes in one bucket, so the Rules bucket, and what goes in the Guideline bucket.

DAVID MCAULEY: Let me make a suggestion here then. I'm going to reverse what I just said. Maybe we should not poll on this, but rather do that in the survey that we come out with to the membership. And in that survey, we will do our best to be more clear on this, Eberhard. So let's move on to the next one, not poll on this. I'm afraid if we polled on it now, it would maybe add to the confusion.

BART BOSWINKEL: And you will see divergence anyway. So next slide, please, Kim.

Council only decisions. To understand this in the Bylaws, so Article 10, there are decisions reserved—and that was the term I've used to distinguish and to make clear that the powers of decision-making are reserved for the Council only according to the Bylaw, according to Article 10. However, there are some decisions you could argue which are not explicitly listed in the Rules as such.

So there are two decisions which are an example of Council only decisions. One is the Council only to, according to the Bylaws, that nominates. And that's the new terminology since the transition. Board Seat 11 and 12, so that's Section 10.3(i) and according to Guidelines but that's due to the Annex D. In certain circumstances, the ccNSO, as a Decisional Participant, needs to take a decision within 14 days. So these decisions have been reserved through the Guidelines for the ccNSO Council and it's halfway through one of the four processes of Annex D. So these are the examples of Council only decisions to date. Are there any questions?

And they're not listed in the Rules currently. Let me be clear on that one. So we're heading towards the points that Eberhard was raising about a list what is and should not be included as Council only decisions or members only decisions, etc. I don't see any hands. Good. Then we'll go to poll number four.

So, should the Council only decisions be listed in the membership Rules? Okay. Can you close the poll, please, Kim? Again, I see the vast majorities in favor of including Council only decisions in the membership Rules. Can somebody who said no, can one of those persons speak to it or add something in chat?

NICK WENBAN-SMITH: I'm happy to speak to that.

BART BOSWINKEL: Go ahead, Nick. Thank you.

NICK WENBAN-SMITH: I just suppose I'm nervous about hard baking in concrete exclusive list for my questions for which the Council have delegated authority. Because if new things come into the mix and we want the Council to be able to progress them, it seems to me that they would be unable to in terms of our governance structure without the further change to the Rules. As you know, that's a multi-year process and I just wonder whether that is too inflexible. Or rather, I'm not saying don't do it. I'm just saying I need to be persuaded that list is really good or is carved

with enough flexibility to be more forward looking over the sort of 5 to 10 year time period, if that makes sense.

BART BOSWINKEL:

Thanks. But this is Council only decisions. I will go through three types of decisions. Council only decision, so that's only the Council; Council decision subject to veto of the members; and, finally, the membership only decision. So these are the three flavors we'll discuss. So I don't know, would that change your concern, Nick?

NICK WENBAN-SMITH:

Potentially, I guess. I'm just trying to think of a good example. It's not a brilliant example. But, for example, just voting on things like nomination—I should disclose I'm a Council member, so if you have an interest in this—as to what we're allowed to do and what we're not allowed to do. But we've just been voting for, say, the ccNSO's representative to the Nominating Committee. So that's clearly something on the list of questions for the Council. And I just wonder if there are future changes of the sorts of flavor which for practical expediency, because the timeline is short, you don't want to have a membership vote on this. You want the Council to be able to make these sorts of decisions and the Council should be empowered to make those decisions on behalf of the whole ccNSO community who's elected them to do that job. And you might make it impossible to do their job efficiently and sensibly. That's the only caveat. And if I was comfortable about that then I would get back in my box.

BART BOSWINKEL: Don't you think that we'll discuss it? That will be the next question, Council decision subject to veto. Even under the current Rules, because it's not even included, but there is a list of current decisions which is based on the Bylaws, which is exclusively for the Council. So there is no role for the members.

Okay. I think again this needs clarification. Nigel, your hand is up, and then we'll go to the next one.

NIGEL ROBERTS: Yes. Thanks, Bart. The first thing I was going to say very quickly is that the reason I express the view of "no" is exactly the same as Nick. And Nick and I are almost word for word on the same page.

I'd also like to highlight and this is a bit of history here and I'm sure, I believe, Chris, who was there at the time, can give color and depths on this. There's a technicality about the nomination as it's now called of Board members from the ccNSO that appeared back in 2003/2004. It was decided by the ccNSO that—I'm going to make the subtle difference between decision and nomination—the nomination is made by the Council for Board Seats 11 and 12, but the decision is made by the members and that is baked into the Rules of the ccNSO and it was baked in for a reason. We were advised at the time by ICANN Legal—I remember the meeting—that as members of the ccNSO, we're not members of ICANN the corporation. It could not make the decision directly and it had to be the Council that formed and who did it. But as

you'll see from the 2004 Rules and from the elections that we've always had for the last 20 years almost, it's the members that make the decision, not the Council as to who's in Board Seats 11 and 12. Thanks.

BART BOSWINKEL: Nigel, just for clarity, which Rule are you referring to in the 2004 Rules? Because there is no reference to any decision by the Council with respect to the Board Seat nomination nor from the members.

NIGEL ROBERTS: So why have we been holding elections this last 15 years?

BART BOSWINKEL: That's another question.

CHRIS DISSPAIN: I can answer that question, Bart. It's Chris.

BART BOSWINKEL: Yes. Chris, go ahead.

CHRIS DISSPAIN: The decision was made that—we couldn't have a Rule specifically that was the exact opposite of something in the Bylaws. The Bylaws say clearly that it's Council's job. But it was agreed—and I know it's on the Rules and I can't remember. It might have very well been said in the

members meeting—that it would always be the case that in respect to the nomination of directors to the Board, there would be a members vote. And if it helps, I appreciate the distinctions you’re making about Council only decisions and so on.

In my head, it’s this. There are a small number of decisions that the Council is mandated to make by the Bylaws and the ccNSO can manage those decisions in any way of advice. It can agree, for example, in case that Board that it will always have a members vote, and if it doesn’t, if the Council tried to slip it through without a member, that is always open to the members to call on the Council.

The second is that currently, at least, every decision that’s made by the Council is subject to members’ ratification. And that would apply, in my opinion, just as much to nomination to the Board as anything else, and that, I believe, is in the Rules.

And thirdly, again we’re just trying to help here, the reason we put Guidelines in place—and it’s not the best use of the word, Operational Procedures is better—was really for administrative things. It was always intended to be for administration to be for things that are needed to be done straight away and didn’t need to be checked by the members [inaudible]. I hope that’s helpful.

BART BOSWINKEL:

Kim, can you go forward two slides, please? One more. Because this will add something probably to the discussion as well. Next slide,

please. Sorry, Kim. Next slide, please. Next slide. It's the members only decisions.

As you can see, the Board Seat 12 candidate selection and election of candidates, because they are not included, this will be under this question, whether or not to include this in the Rules. So that is very clearly and it is included to end that discussion who is taking—the nomination is with a small N, so that's really getting a candidate. And the nomination currently it's called the nomination procedure in the Bylaws. That's why that adds a little bit to the confusion. But the nomination and election of candidate is currently only a guideline, but it's suggested by the group to include this in the Rules itself. Chris, is that a new hand or an old one?

CHRIS DISSPAIN:

Sorry, Bart. Yes, it is a new hand. I think you've just raised a point that we can use as a really simple illustration of the division here. So the Bylaws say the Council nominates the Board members. On reflection, 17 years later, there really isn't any reason why the ccNSO and its Rules cannot say in order for the Council to make its nomination, it is a Rule of the ccNSO there should be a members vote. And it is equally possible to say that any changes to the process by which account the Board member is nominated should be dealt with by the members. I mean you might not want to say it. The people might not want to say it, but you can say the election to the Board is such an important thing that the process is here mandated in a document. There have been the Rules that can be in a separate document, and you can say that

changes to that document cannot be done under the Council's Operational Procedures. That has to be done through voting members. So, in other words, it doesn't necessarily have to be changing the Rules to put into voting members, it can be a specific document referred to in the Rules that needs to be changed with the voting members. I hope that's helpful.

BART BOSWINKEL: Or make it subject to a veto vote.

CHRIS DISSPAIN: You can always hear that but there's a timing issue with that.

BART BOSWINKEL: Yeah. Nigel, go ahead. And then we'll go back to the poll.

NIGEL ROBERTS: Just a very, very quick point because I can see it's falling into error here, potentially. We have a lot of Guidelines at the moment. Can you tell me which Guidelines are not part of the Rules? Because all the Guidelines I've ever read expressed on their face to say they are.

BART BOSWINKEL: I would say none of them are part of the Rules. Not in the sense of they're not part of the 2004 Rules, nor have they've been subject to the change mechanism of the Rules.

NIGEL ROBERTS: Well, in that case, I think we're—

BART BOSWINKEL: Because if you look at the Bylaws—

NIGEL ROBERTS: Because every Guideline I've ever read says it's part of the Rules of the ccNSO in the 10.3(k).

BART BOSWINKEL: If you look at 10.3(k), you will see there is the two separate sets of documents. One is the Members Rules and the other one is the Operational Procedures. The Guidelines are the Operational Procedures.

DAVID MCAULEY: I think, though, this is a fair point. This reinforces our desire to clarify the Rules. So I think Nigel's point is a good one. We need we need clarification here. I think it would be a good point to go back to the votes. It may be that we're not going to get through all the polling questions, in which case, again we'll get to them in a survey for the members.

And also I just would like to make my own personal comments to the concern that Nick and Nigel had that listing Council only decisions may restrict Council's ability at work. I personally don't see it that way.

Council would still have the hand that it currently has. It's just that the Council operates under membership control ultimately. It's just saying if it's not listed here, then membership is basically going to have a right to control this. But, Bart, should we go back to the—

BART BOSWINKEL: Yes. We'd go. But this was just the illustration to understand the full package. And maybe the previous one—can you go two slides? Five, please. This is, I would say, the general Rule currently and which Chris and others have been referring to, and this is what you see in the Rules with respect to the relationship between Council and members.

So we go back to number four. Can we go back to number four, please? Council only decisions. Can we do the poll, please?

KIMBERLY CARLSON: All right. We already—

BART BOSWINKEL: Did it? Okay. Then we go to slide number five. Sorry.

Council decision subject to members veto. This is the standard in the current Rules of the 2004 Rules of the ccNSO. Again, the exceptions are because they are listed in the Bylaws Annex B. There is the Council decision and the Board Seat 12 nomination. So that's the final, final decision, Sub 10.3(i). Through the Bylaws, it's been reserved for the Council.

So this range of decisions, as Nick already alluded to, is very, very broad. It ranges currently from ICANN Board director removal and rejecting the ICANN yearly budget to approval Guideline and Charters, ccNSO Council statement, to appointment of members in working groups. So that's the vast array of Council decisions. Council decisions are subject to members veto or ratification applies. Next slide, please.

Are there any questions to this one? I don't see any hands up. Can you do the poll, please? This is where you see four flavors. So there is a generic yes, all decisions; yes, but not all; and then no decision at all; and no opinion.

Okay. First, I see no decision at all, should be subject to members veto. Can the person or persons who included this please speak up? I don't see or hear anybody. I think very clearly there is more discussion needed. I think we already touched upon some of the arguments in the discussion with Council only decisions. Maybe without repeating the arguments, is there an additional argument somebody wants to raise with respect to this point?

DAVID MCAULEY:

Bart, I'd like to just note what Chris said in chat about the notion of stress testing. When we come up with a set of Rules to consider doing some stress test, it's an interesting suggestion, it is noted. Thank you, Chris.

BART BOSWINKEL:

Thanks. Then we go to the next point. I'll close this one. Go to the requirements. We'll skip this one. There are detailed requirements in the Rules. I think the next bit about members only decision is more interesting. Go to slide seven, please, Kim.

Members only decision. We're referring to those members only decisions which are not provided in the Bylaws. There is an exclusive members vote in the Bylaws that's in Annex B which we'll hit and that's a vote on the result of a policy development process. That's a power for the members and that's embedded in the ICANN Bylaws.

There are, however, some examples currently which are members only decisions through the internal mechanism. One is the change of the members Rules as we discussed. So that's in the Rules. Request vote on the Council decision. That is also included in the Rules currently. Veto a Council decision. That is also included in the current Rules, the 2004 Rules. And then the Board Seat 11 and 12 candidate selection. That's how we called it and we discussed this. This is currently documented in the Guidelines.

So that's a list of members only decisions. Again, this is according to the membership voting mechanism that is documented in the Rules. Any questions on this one? Comments? Then can we go to the poll, please, Kim? Poll nine. Poll eight, yeah.

Can you close the poll? Again, I see the vast majority is yes. Those who oppose, could you please speak to it, why you think this should be a no? Not all listed.

NIGEL ROBERTS: I can answer that briefly by referring to what I said earlier. You can't list everything explicitly. Fundamental is that everything is reserved to the members in the constitution of the association and delegated to offices, and then to Council and so on. That's how it generally works in constitutional matters.

BART BOSWINKEL: I saw your note in the chat, Nigel. It will be noted by the subgroup, undoubtedly. Anybody else?

DAVID MCAULEY: Yes. I haven't seen the point in chat, but I do think it's an interesting point, Nigel. I think the concern about expressing things is probably more of a concern with respect to expressing membership rights than it is to Council rights for the reason I stated earlier. So as Bart said, Nigel, thank you for that point. We will put that in mind in the subgroup as we move forward. I note, too, that we only have two minutes left, Bart.

BART BOSWINKEL: Yeah. That's why I wanted to finish with this one. We'll take the other ones on list and probably halfway through, and maybe that's more of an advice that we run through another intersessional update where the subgroup is and have a little bit more time to discuss some of these matters. Back to you, David.

DAVID MCAULEY:

Thank you, Bart. And thank you especially for running us through the slides as we've gotten through them today. I'd like to mention one of the things that we're going to be polling on in the survey is whether we should have some kind of a review mechanism adopted. As we mentioned, this is the first time we're actually formally looking at the Rules since 2004. One of the things we think along the way is do we want to do this more regularly? So we'll be asking that.

What I'd like to do in summarizing in the minute or so that I have left is express some thanks first to the members of the subgroup who have helped us get to this point. Secondly, to members of the Guidelines Review Committee who are the genesis for this whole discussion of getting at our constitutional documents. And thirdly, I like to thank everybody here, all the members. This was, in my opinion, a very enlightening discussion. It's very helpful for us, the subgroup, to move this forward. And so I want to thank everybody for their attention and I would urge you to continue that on the list as we come to you with both the survey and with whatever we come with on the list, questions, etc. This is an important process. And in this process, it's important that we use the list cogently. So my great thanks to staff and to the members for this. I'm basically finished and I think we can close the meeting, so I would I'd like to ask to do that. Thank you.

BART BOSWINKEL:

Thank you. Bye-bye.

KIMBERLY CARLSON: Thank you. Please stop the recording.

ALEJANDRA REYNOSO: Bye-bye.

[END OF TRANSCRIPTION]