YVETTE GUIGNEAUX: Greetings, everyone. Welcome to the NomCom Review Implementation Working Group Meeting #91 on December 16, 2021 at 20:00 UTC.

Joining from today's call from the working group, we have Tom Barrett, Cheryl Langdon-Orr. We have Arinola, we have Remmy, we have Michael. I think that's about it for the working group at the moment. Joining from ICANN staff, we have Kristy, Larisa, Jia, Teresa, Sam, Amy, and myself, Yvette Guigneaux.

We'd like to remind everybody that the call is being recorded today so please state your name before speaking for the record. I'd also like to ask if anyone has any changes to their SOI or any updates? No? Okay. I think we're good to go on that. So I'll get the agenda on the screen, and, Tom, I will turn it over to you.

TOM BARRETT: Thank you, Yvette. Today we have a discussion with ICANN Legal to talk about the unaffiliated director recommendation, go over the redline for the charter with the Standing Committee, finalize the Implementation Status Report, the year end, and then plan our next meetings. So why don't we jump right in to talk about unaffiliated directors?

SAM EISNER: Thanks, Tom. This is Sam Eisner from ICANN Legal and I'm joined today by Amy Stathos. I know many or most of you know Amy. We work together in the Legal team. And so I'll take you through the presentation but Amy will add in as needed and will help answer some questions,

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too. We work together on a lot of the governance-related items that we'll be covering today. So if we can go to the next slide.

As Amy and I reviewed the definition that had been proposed by the NomCom Review Implementation Working Group in one of your recent updates, we had some questions about it and wanted to have a back-to-principles discussion with the group to make sure that we were supporting you in reaching a workable definition that we could incorporate and make sure that the NomCom could produce too as well. Our objective today is really to have some discussions about principles and agree on next steps on what we can do to support this team in coming up and refining the definition that's been presented. So with that, let's go to the next slide.

So we started back at the review of Recommendation 27 where this comes from. I don't need to read it to the group. I know that you're all very familiar with it but we'll refresh our understanding as well. This was a recommendation for designating three seats of some level of independent directors focused on those with limited prior ICANN experience to bring some strategy and to provide some level of perceived separation from any part of the ICANN community when serving the ICANN community as a whole. So if we turn to the next slide.

This is the NomCom Review Implementation Working Group proposal that we understand is there. It has been presented and we don't believe that there's been any changes to it. Of course, let us know if there have been. But this is the text that we were thinking about when we were trying to figure out how to design this conversation, how to really kick it off with you guys. And so we'll go into a little bit more depth about

some of the areas that we think that there are some places to clear up here. But we see that the attempt to provide that unaffiliated director definition, and that's the term that the RIWG has been using, to be focused on contracts or employment and potential conflicts of interest. And so we wanted to step back a little bit as we talk through with the groups that we could hopefully get to a little bit more refinement of these principles. So with that, if we can go to the next slide.

I know many or most of you have served on NomCom before and I know that one of the things that has been confusing with the terminology is the fact that there's independent directors for the IRS versus independence of what the Independent Examiners were looking at. We understand there's a difference with that, but we thought it was helpful to step back for a second and just think about that the general governance principles that we have in place that we already need to make sure are taken care of first. So the IRS definition of independence—and this is something that we look at because ICANN is a 501(c)(3) organization granted that status with the IRS. And so we have required filings required governance, compliance obligations that come out of that. One of those is to evaluate the independence of the members of our governing Board every year as part of our reporting for the form 990. The form 990 is our annual tax-related form. Of course, we don't file taxes but this is our form that we file with the IRS on the same cadence that other entities would file their normal tax forms.

So the IRS is governance consideration is that the governing Board—and we're talking about the ICANN Board here—should not be dominated by those who are not, by their nature, independent individuals because of family or business relationships. And so this is part of our annual

assessment that we look at all the Board as a whole and identify whether or not, for the purpose of that year, they were considered independent as part of the IRS definition. The purpose of this is to make sure—not to make sure but the IRS has imputed that if you have a predominant number of members of your governing body that are considered independent that then the Board is then considered to represent a broad public interest as opposed to giving opportunities for insider transactions. I know that ICANN general counsel comes and talks to the NomCom about these concepts as well, some of the director's duties every year. So this isn't new information for you. If we go to the next slide.

The IRS definition of independence, briefly, it's very technical and I've taken out some of the internal references just to make it a little bit more readable. But it has a few different components to it. It's a four-part test. So you confirm that the member wasn't compensated as an officer or other employee of the organization or related organization and wasn't compensated by other organizations for services provided to the filing organization, which share with the ICANN or two related organizations. ICANN, of course, has a related organization right now, that's PTI. The member didn't receive compensation exceeding $10,000 during the tax year, other than reasonable compensation for services provided in the capacity as a member of the governing body. That could include the reasonable compensation that's provided by election to our Board members or for reimbursement for expenses. So this is about other things that the Board member might do for the organization outside of their roles as a Board member.

There's also the restriction that neither the member or any family member was involved in a transaction with ICANN that's required to be reported. There are different levels of transactions that are required to be reported on ICANN's form 990, and that would be some material transactions. That's where we look at issues of did they take decisions without a conflict of interest in those situations. But again, this isn't really about some of the financial interests that might have been held. This fourth point also has to do with transactions that were of the type that would have to be reported. So again, this is about financial relationships.

So this is a very high-level definition of independence. It really focuses on financial transactions. It's evaluated about what happened during that year and the individual stance of each Board member during the year. It's something good to keep in mind as the NomCom goes through to a point. There are times where we have directors who are not independent under this. But on the whole, it's not necessarily as high of a bar as we understand the NomCom Review Implementation Working Group is trying to achieve through the unaffiliated director. So we understand that it's different but wanted to start with this as a baseline. So then, we think about some of the other duties that the ICANN Board members have to take on. So if you can go to the next slide, please.

The ICANN director fiduciary duties. We're not going to the full depth of each one of these. But of course, there are three main areas of fiduciary duties that directors perform their duties in good faith in the best interest of the organization and with care as an ordinarily prudent person in a like position would under similar circumstances. This sets out that basic fiduciary duty of acting on behalf of the organization as a

whole with the proper controls around that. And that includes—if we can move to the next slide—conflict of interest practices.

These are things that ICANN has put in place, of course, as 501(c)(3) we have to report to the IRS whether or not we have conflict of interest policies in place, which we do. We also require that we have these in place under our Bylaws. I'm sure many of you have seen the conflict-of-interest policy. And as part of our collection of annual information on the conflict-of-interest policy, ICANN maintain summary of officers and Board members' Statements of Interest. We update those every year as the Statements of Interest need to change, just as every call that many of you get on and within ICANN system, you're asked if you have any change to your Statement of Interest. Whenever there's a material change for a Board member in employment or other contractual relationship, they report those to ICANN. We maintain the Statements of Interest up to date for people to go in and review at any point. And then we have a very broad conflict of interest practice within the ICANN Support Governance Committee where the ICANN Board members are actively encouraged to consider for each item that comes up before the Board whether or not they have an actual or perceived conflict of interest. And then there's a process through which the Board members can identify that proposed process or that potential conflict of interest and discuss with the Board, whether or not that is something that needs to be considered at the time of decision making and how that will be reflected, whether the Board member will be asked to not participate in conversations, whether the Board member will be asked to leave the room, there are a wealth of potential remedies to that. But the really big focus for us is making sure that those are identified as it relates to

each decision as necessary and that there's some transparency to the ICANN community when there has been an actual perceived conflict of interest identified, and to make sure that we have the appropriate record maintain that whether or not a director had to abstain or leave the conversation due to actual perceived conflict of interest.

Then, of course, conflicts can come up in many different ways, right? It's not just about someone who might be involved with the contracted party, that would be one of the most familiar conflicts of interest or most regular ones that we have in the ICANN system. But we also have the potential that we could have a vendor, that's just a vendor that was selected to do some work that isn't necessarily part of the ICANN ecosystem but there could be an impact or some level of materiality of relationship to that director through their other business interest. It doesn't have to necessarily be something that's directly related to ICANN, which is why we consider this very broadly and not just about our contractor relationships.

So with that, let's go to the last page and this is really the main discussion page and where we'd really like to start hearing from you. So we had a couple of questions. We wanted to make sure we understood the principles that the RIWG was seeking to uphold through the December 2020 definition that we showed before, whether or not that that definition serves as principles and is the definition clear enough to be understood and applied. Because that's where we'd really like to help the RIWG through to make those items actionable. From our review, the recommendation from the Independent Examiner focuses on issues of limited prior ICANN experience highlighting—

TOM BARRETT: Did I lose audio?

LARISA GURNICK: I don't think it's you, Tom.

YVETTE GUIGNEAUX: She's still in the room. Sam, can you hear us?

CHERYL LANGDON-ORR: Gremlins.

YVETTE GUIGNEAUX: Not on your birthday. That's not allowed share.

SAM EISNER: Sorry about that. All of a sudden, I was staring at my computer and it all went blank. But then it reconnected really quickly. So I'm here. But hopefully that won't happen again. That was an interesting little blip. So where I was speaking before my computer cut me off was that there's an understanding or an extraction from the idea that if you find someone from outside of the community that they were better able to avoid a perception of duty to any individual ICANN constituency when you're looking at a Board member service. Of course, as we've gone through the director's duties, there's also that expectation that Board members themselves are always acting in the broader ICANN

community interest and not for any individual constituency. But this recommendation we understand is really trying to enhance a perception as it relates to at least three directors coming through a NomCom cycle that there's a little bit more separation.

What we see the NomCom Review Implementation Working Group proposal focusing on is on contracts or employment with ICANN bodies that appoint the ICANN Board. And I think that's one area we'd like to discuss with you a little bit more because that seems both under inclusive and possibly over inclusive. Because we don't necessarily have direct employment relationships with the GNSO, for example, or the SSAC—the SSAC doesn't appoint—or the ALAC or other groups like that.

And then and with the addition of the actual perceived conflict of interest, we wanted to hear some of your thoughts on that language because we don't necessarily impute conflicts of interest arising just from serving in a leadership role or decision-making capacities or receiving reimbursement. Those were the things that were laid out. The conflict of interest has to do more with the decisions of the Board and not just by virtue of potential community positions held. So we really wanted to talk through that a little bit more with you because we weren't sure that it met the goals of the recommendation itself so that we could have some idea of how to move that forward.

So with that, I think it's time for me to stop talking. I'd like to first pause, ask Amy if she had anything else that she wanted to add. And then when she's done, I think it's time to open this up for some questions from the review working group.

AMY STATHOS:	Thanks, Sam. I think you covered it pretty well. One of the things that I did want to note is that as it relates to what we post in terms of summary of Statements of Interest, those are things that are related to kind of what ICANN does. Not everything in those summaries are necessarily conflicts. All of the conflicts that have been reported are in the summary, but additional are just things that show that there's involvement that maybe somebody in the ICANN community might be interested in. So it's even a little bit broader than a conflict-of-interest statement itself. But other than that, I just want to reiterate what Sam said about the fact that the policy itself is focused on those actual, potential, and perceived conflicts. So our Board members will identify all three of those whenever an issue is brought to the Board for consideration.

TOM BARRETT:	Thanks, Amy and Sam. That was very helpful. I've got some questions, but I'll first open it up to the group to see if anyone else has anything. Go ahead, Cheryl.

CHERYL LANGDON-ORR:	Thank you for that. I think everything you have raised are things that— I'd be very surprised if ranking for amongst us all, we are not in absolute agreement with and understanding of them and things that we've discussed. But I guess what we then need to look at in this discussion is how we can get to what I think is part of our intent. And that was not so much the focus on conflict of interest and management thereof and the

matters of continuous disclosure, and all of those things which come into play once appointments are made. But I think on the scale, for the want of a better metaphor, in advice and recommendation to future NomComs to look for amongst their possible candidates and to perhaps bias their choices towards those that are not just in that classical sense unconflicted but are going to be on an external view or even a part of ICANN community's immediate view, not an industry or clearly additional to appointing body appointment. Does that make sense? Because that's what we were trying to get at, sort of encourage an ability to say these are demonstrably independent, yet knowledgeable, experienced, and appropriate candidates.

TOM BARRETT: Thanks, Cheryl. Sam or Amy, do you want to respond to that or should we go to Vanda?

SAM EISNER: I think we can go to Vanda. Thank you.

TOM BARRETT: All right. Vanda?

VANDA SCARTEZINI: Hi, Sam. Hi, everyone. We also discussed for the future perception that when we have the next round, it's important to have people there that will be not retired or retirees—sorry because it's a Latin word—but go out from the room and sometimes this may be incapacity to vote. So,

we need to have also the perception from the community that those decisions during the new gTLD rounds will be taken by the majority, not the few members that will be not in this particular issue conflict with because they are applying like we have in the past. So that perception is something that bothers a lot the community in general because in the end that decision were made by three or four guys over there. So, like Cheryl said, the importance of having real independent people that in any way is involved and will be able to sit in the table all the time. That is one discussion that we had during these positions that we had in this group. Thank you.

TOM BARRETT: Thanks, Vanda. I am the queue. Any comments, Amy or Sam?

AMY STATHOS: No. I just appreciate some of the understanding of what your thinking was in terms of trying to achieve the results of the recommendation and also achieving what you guys have been talking about of what you think makes sense. So I really appreciate the clarity.

TOM BARRETT: Thanks. So I'll put myself in the queue. I certainly support what Cheryl and Vanda have said, and the perception is very important. One theme in here is that we want some independent thinking that says that non-insider thinking about perhaps how ICANN should evolve. So we certainly want to bring in some outside perspectives. A common saying is that also this was intended to avoid an alternate path to the Board. So

in the sense that there's already ways to get to the Board from the various appointing parties, we don't want this to be an alternative path for someone who would otherwise be qualified for that and other path and perhaps unfairly stack representation on the Board.

But your presentation here, I haven't identified two perhaps deficiencies in our definition. First, contracts or employment with ICANN bodies, as you rightly pointed out, the GNSO and CNSO don't have people working for them. So that really was meant to be employment with members of ICANN bodies that appoint members to the Board. So, for example, a gTLD registry or CNSO registry. I think we omitted a keyword there that we could revise the definition around.

The other thing I think you also raised which we had not thought about was, let's say we find this unaffiliated director, they go through all of our filter here, they get appointed to the Board. What if then they become conflicted because they work for Deloitte or someone else who's suddenly becoming a contractor to ICANN? Do they simply recuse themselves, or at what point do they recuse themselves? So I know we have a conflict-of-interest policy that maybe is sufficient, but we certainly didn't think through asking candidates, "Do you envision your employer perhaps becoming a contractor of ICANN in the future?" That's something perhaps we had thought about.

But I'll stop there. As Cheryl said, there's already a conflict of interest to cover a lot of that but certainly something we had not spent much time thinking about. So I'll hand it back to you, Sam and Amy, if you have any thoughts about that.

SAM EISNER: Thanks, Tom. So as Amy said, I think this is really helpful and I think that this is a really good start to us helping to maybe take the next pen on this and helping to make some proposals back to the group. Tom, I take your last point, I'll start there. I think that it's very difficult for anyone to make an appointment to the Board with a guarantee that a conflict will never come up because it's hard to anticipate what those are. But I think that the group has also explained that this is really about identifying a path to have some members of the Board where they're less likely to be conflicts than others. We know within the ICANN world that relationships with contracted parties or those really active in supporting contracted parties might be the places where there are more likely to be relationship issues that cause people to identify conflicts of interest as issues come up before the Board. Because we'd never presume a conflict in general, right? Conflicts are issue dependent.

So I think to the extent that we could help with drafting, I think we probably want to focus more on those obvious areas where it looks like we're trying to support, bring in well-qualified but external voices, and maybe not focusing as much on the potential future relationships with ICANN through an employer but more so trying to evaluate the existing current relationships with ICANN. I'm just throwing out an example here. We know that we identify publicly some of our highest dollar vendors each year, if someone's employed with those, maybe that also is some area where it wouldn't necessarily make sense to have those people than ICANN's governing body. But that's maybe where you draw some lines, as opposed to trying to figure out everything that could be

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coming down the pipe. And then the NomCom itself, in your interview process, there's also an ability to understand where people have interacted with the ICANN world and where they haven't. So I think in some ways, this is a matter of both having a workable definition as well as potentially having some guidance to the NomComs about how to apply the definition. So it could be that there's two components to this that we'd want to think about. Amy, do you have some thoughts on that, or anything else that you've heard?

AMY STATHOS: No. I think that pretty much covers it. We have, as Sam mentioned, various methods of dealing with items post appointment. I know this group here is considered distinctly, which makes sense, because as Sam did say, depending on what issue comes to ICANN, and as we all know, we get brand new issues on a regular basis but no one anticipated, and there's no way you can identify all of those. But I also recognize the point that was made as it relates to the awareness of things that are coming down the pipe such as the new round of new gTLDs and things like that that are just so evident, that it's things that are relevant for consideration.

TOM BARRETT: I have a question. It's more of a tangent. I know the first round of TLDs, we had Board members who jumped to contracted parties. Has any steps been taken to try to discourage that sort of activity once they exit the Board?

AMY STATHOS:	In 2011, the Board passed a resolution as it related to the first round that reference that. I can't pull it up right now, but it has something to do with the fact that if there was any decision that the Board voted on, they would agree—Sam, maybe you can help me find the language—not to take some certain action. But as we know in the new gTLD program, everybody had agreed that the Board would not take any action on all of 1930 applications. As long as the processes were followed through the program, the Board didn't have to make decisions on those, only the ones that were in contention. So there was that one decision as it relates to that.
	One of the things that we have to think about is that when we're dealing with people, we have no ability and it's not legal for us to tell people that they can't go work somewhere. It's hard for us to put limits on anything from a legal standpoint, but the Board has, as I said, passed that resolution even before the applications were received, I think. I'm not quite sure exactly. Maybe it was right after they were received. I just don't remember. Sam, do you remember when that resolution was passed?
SAM EISNER:	I'm trying to look. I can't find it right now but we can surely dig it up. Just maybe not while we're on this call.
TOM BARRETT:	So let me ask you. Is there anything problematic in what we're trying to do? Is it in conflict with the ICANN Board Bylaws or governance?

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SAM EISNER: No, I don't think it is. Amy interject if you do. I think it's okay for us. And indeed, we would have reflected at the time that the Independent Examiner provided their recommendation if we thought that we were unable to put in some heightened requirements for a certain number of directors appointed through any process. So we are able to put in the ICANN community if everyone's agreeing. We had the comments over the Independent Examiner report and everything, that this is okay to do, we just have to make sure that we have it in a workable way that people understand what it is.

I know from my standpoint, what I've heard today from the group makes a lot of sense. Actually, it resonates very well with what I see from the recommendation language. So I think we have some principles that you all have laid out about bringing in independent thinking, bringing in people from the outside who can look on ICANN more to help make sure that the NomCom itself isn't available for all the seats that NomCom appoints to be an alternate path for people to join the Board, to make sure that we are thinking about some level of future proofing for the big things that we know are coming down, that those have the opportunity to be considered as part of the process where people, even if they're coming from outside, have interests that then become entrenched.

I'm trying to think about how we can look at the language that the RIWG has already presented and maybe present some additional modifications or maybe new language depending on where we come from to better express those in a way that we think could be interpreted

well from the ICANN side, as well as from the NomCom side. Because I think one of the important concerns that will come up here is—and those of you who have served on NomComs understand there's always at least one candidate that there's that question of, "Do they fit the requirements or not? Are we allowed to consider this person for candidacy for this type of role because of some of the service preclusions and overlap requirements and things?" We want to help the RIWG build a definition that is as clear as possible so that we don't have to keep answering that question over and over, and the NomCom doesn't have to keep answering that question over and over. So we have that clarity issue that helps us with enforcement, that helps us with protecting the ICANN community from challenges that these selections weren't done properly. I think we want to make sure that we have something as clear as possible for people to act on. Then again, maybe we do want to issue some additional guidance to the NomCom such as considering future large projects that are coming down the pipe. Maybe include those in your interview process so that you understand where some of the other things might come from. Because there will be people who will be precluded from applying under this and then there will be people for whom we're asking the NomCom to make substantive decisions about based on how they perceive they need it. I think we have to serve both of those issues to make sure that that the selection processes remain above reproach.

TOM BARRETT: Thanks. Cheryl?

CHERYL LANGDON-ORR: Thanks, Tom. Thanks for that, Sam. I think the guidance aspect is a really important one to pick up on and certainly a piece of work that's worthwhile doing. And that'll also, I suspect, be something we need to plug into the watching brief of the Standing Committee, because as the needs and the gazing into the crystal ball happens as to what's coming down the pipeline next, that is something that might need to be, in terms of guidance, adjusted.

I think it's important that we don't want to be trying to limit the flexibility, abilities, and opportunities that any NomCom has. And we recognize, of course, that they can only ever pick from the couple of people that are there. But sometimes these suggestions will also help as to why they do outreach and engagement as well. For example, if there is clearly going to be a type of public interest issue that is going to be coming over the horizon shortly, then deliberately seeking out potential candidates from entities in the not-for-profit space, even retired, governmental or departmental experiences, things that would normally not be on the short list of places and talk to people to encourage, that they would bring back one of them, not all of them, just as person who bring in that type of real world experience. And the other thing, I guess, is also the size of the business. The domain name industry seems to be important, and yes, it's fundamental. But come on, it's not really big. ICANN is, "Look how much money it manages." It's a small business. In the biggest global [scheme] of things, it ain't a blip on the horizon. And so if one could ever attract someone who has the experience of the next layer of budget, finance, money management, development, all of those things, that'd be a wow and it might be this influences a NomCom to make that choice available.

Does that make sense? We're not trying to be too prescriptive, but we are trying to open up opportunities as well as perhaps encourage certain choices where they're possible to make. Thanks.

TOM BARRETT: Thanks, Cheryl. That makes perfect sense. We definitely need to be aspirational. My other two thoughts. One is we do have a way for, say, a prior contracted party to apply to the NomCom. I think we came up with a one-year gap. I don't know if that's an appropriate time period or not. That's obviously arbitrary. I don't know if you want to talk about that. Just another tangent is it seems to be a gray area in terms of affiliation with governments and whatnot. They can apply through the NomCom.

CHERYL LANGDON-ORR: You can't. If you're actively involved in government or department, the answer is no, you can't.

TOM BARRETT: I'll give you two examples of a gray area. One is in China it appears that every commercial business is partially owned by the government. So the question is, is that a disqualifier? We've also seen relatives of royalty from Eastern countries and whether or not that is a disqualifier. So it happens every year and it's not clear—

CHERYL LANGDON-ORR: It is a regular occurrence. And I guess that's something that we need to look at, because if you've got a well enough balanced Board, then one

or two of these things does not make a huge difference. It's when you don't have a well-balanced Board that it can be a major problem, and that's probably the way the rules were designed. Avoiding that when there was less diversity, I guess, in the type of a Board member being appointed. But with regards to things like associations with departments, governments, and indeed, even royalty, most of these people need real jobs when they're not deployed in that activity anyway. And so they have a retired head of department from the Department of Communications from [inaudible] or the country you like is fine because they're retired, they bring that wealth of experience with them. But they won't see the clear line or needing to do the governance line that they're involved with. I know I've worked with people who I've seen tooth-and-nail opposition with during their term leading up, and were hand in glove once they resign and can speak their own mind. That is the political string pullers that they have to work for. Those are politicians who I'm referring to. With royalty as well, they need real jobs as well. And so that's where your conflict-of-interest program is vital.

So I think, further on, we could look at loosening up my ideas in some of these rules. Yes, it's regular. We certainly had part of the Russian oligarchy come across our desk when I was doing the NomCom, and that's okay, we just have to manage those things. But that being said, if we establish a refractory period for business or industry, then it's probably a similar refractory period we should be looking at for all other categories. I don't think you should be treating a category of break different to other categories of break. And if you are working for an agency then that just put it under the business ruling. Thanks.

TOM BARRETT: Thanks, Cheryl. Just to follow up on that. Are you suggesting we expand our definition to allow a former government employee—

CHERYL LANGDON-ORR: That is outside. We don't have a mandate to do that. That was not a recommendation. That is something I foreshadow may happen in the future. But if we're fitting any form of break time, then there's a standard that can be applied across all of circumstances.

TOM BARRETT: Okay. Any other thoughts or comments? Sam?

SAM EISNER: Just on that point, one of the things that we're doing here is we're establishing some eligibility criteria. In the Bylaws, as we've already discussed, establish eligibility or things that preclude people from being eligible for service from the Board. So what we understand the goal is is really to establish a heightened level of eligibility for a few of the seats that are appointed through the NomCom, the recommendation was about three. I don't know how far the mandate of this group goes to [inaudible] it to all NomCom seats. So there certainly could be guidance to the NomCom about how to consider this for more than those three seats. So as we think about eligibility, I think we're not necessarily able, as Cheryl discussed the mandate, to include other eligibility things. So I'm not sure we could include for the Board a requirement like for the governmental service one. Right now, if someone were in a governmental service role today but left that roll tomorrow, tomorrow

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they would be eligible to be considered for the Board. And so I don't think we'd write in any sort of additional time, but I think it's definitely something we could consider for the three seats versus making something applicable across the Board.

CHERYL LANGDON-ORR: Sam, then that becomes a precedent and it's at effect, wise words now can become a precedent later because you're absolutely right. Turfed out of leadership in a government position today and tomorrow you can apply. And that's just the way it's written, and that's fine. But if we establish this refractory period from your workings in an employed [inaudible] with a part of industry needs a one-year break, then that will become over a year or three or five an expectation that can be applied at the NomCom discretionary level even if it's not a Bylaw mandated one.

TOM BARRETT: Thanks, Cheryl. I do want to correct one comment, Sam. So in our definition, we are not limiting this to just three NomCom directors. That was in the original IE report, we've brought that limitation. So it does apply to all NomCom directors. Does that change anything?

SAM EISNER: The place where I think it might change is where the ICANN community itself reacts to the proposal, because if they previously had the opportunity to respond to public comments about a proposal that there were three seats that the Independent Examiner recommended, there

were three seats for which there was heightened scrutiny, but of course, it didn't preclude them from applying heightened scrutiny to additional seats. That's a bit of a different expectation of outcome from the community than seeing something inside all eight seats from the NomCom. It's not necessarily my role from Legal to say it's good or bad. I just want to find that that could be an area of tension with the community and their expectations of the NomCom. That would surely come out in public comment, I think.

TOM BARRETT: Well, yeah. Actually, that was changed years ago. So this is not a recent evolution. It was probably changed as part of the feasibility report. So it's many, many ICANN approvals ago that we proposed this definition and did not limit it to three. So it's not something new. All right. Any other thoughts or comments on this? Larisa?

LARISA GURNICK: Tom, thank you. I just wanted to respond to that last comment. We'll certainly confirm by looking through the history and the records. But I believe that at the time that the Board accepted the recommendation and the feasibility, I think it was still the original recommendation of the Independent Examiner. And I appreciate also what you're saying that the change by the RIWG may have been made in the implementation steps some time ago. But that didn't necessarily go through any approvals or certainly didn't go through public comments for consultations or considerations by the Board. So, while it may have

been changed, I'm not certain—and I will confirm this—but I'm not certain that it was recognized as a change per se.

TOM BARRETT: Okay. Yeah, by all means, please check out the record. So what are the next steps here, Sam and Amy?

SAM EISNER: So I think from our standpoint, I've heard enough from the group—and I really appreciate the discussion here—to go back and try to put some pen to paper and see what we can do to move this forward and maybe propose some areas where we could update the definition. I think another thing we could do would be to identify some of the ideas that we heard for maybe some accompanying guidance, but I think that the Review Implementation Working Group will be really key in identifying other areas where guidance might be needed. But we could maybe put some bullet points down or something to help jumpstart that part of the conversation as well. So I think the next step is on us unless you have a different view of it, and then we can come back to you in the new year with some updated text.

TOM BARRETT: That sounds great. Maybe I know we only got a few minutes left here. Did you want to talk about the charter real quick? I know I made some edits the last few days to that. I wonder what your thoughts are on that.

SAM EISNER: Sure. I can stay for the next few minutes.

KRISTY BUCKLEY: Thanks, Sam. So in the final couple of minutes of the call—and thank you all for that great discussion. Thanks, Sam and Amy, for preparing that and leading that. I think that was really helpful for everyone. So the most time sensitive piece on our agenda here is the December Implementation Status and Progress Report to the OEC. Within that report, we have a kind of holding spot for the Standing Committee Charter. But that's assuming that there are not additional redlines. If there were additional red lines, that's okay. We can just hold off on including that in the December status report and include that later on.

TOM BARRETT: Kristy, I think that's fine. As you know, I made edits to both. The one observation I wanted to make was, in looking at the year-end report, there are 19 recommendations that identify a role for the Standing Committee. So I want to make sure the charter captured those 19 roles in some way. So that's why I made some edits to the charter yesterday. I think we've made the charter really brief and I wasn't quite sure it captured all 19 recommendations that identified a role for the Standing Committee. That was the reason for my additions to the charter. But certainly, if you want to hold off until January before submitting it, that's fine.

KRISTY BUCKLEY: I know that the RIWG had about a week to review the draft Implementation Status Report to the OEC. And, Tom, thank you very much for the comments that you submitted. Those all look great. I guess the change that we would make just to give us opportunity to look over those additional comments in the charter, we would just remove this appendix and plan to share that later once that charter is finalized and doesn't have any more redline on it. Any final questions, comments, or concerns with submitting the Implementation Status Report once it's cleaned up?

CHERYL LANGDON-ORR: After cleanup, that's on its way?

TOM BARRETT: I can [inaudible] as well, and obviously just the highlight is we've got two more recommendations to work on in Q1, the Standing Committee and this unaffiliated director, so I think our [inaudible] is pretty clear. I think you guys have done a great job, by the way, Kristy and Larisa and the whole team. Teresa, Yvette, I really appreciate all the work you guys have done this year. I can see the light at the end of the tunnel.

KRISTY BUCKLEY: That's great. Thank you all. I really appreciate it.

CHERYL LANGDON-ORR: Let's make sure you all stay safe over the season to come, and come back all healthy and happy and ready to do it even better in the beginning of the 2022 year.

TOM BARRETT: Hit the ground running in January.

CHERYL LANGDON-ORR: Sounds like a plan.

LARISA GURNICK: Same to all of you as well. Happy and healthy holiday season.

TOM BARRETT: Thanks, everybody.

VANDA SCARTEZINI: Happy holidays and enjoy your winter. Cheryl and myself will enjoy summer.

CHERYL LANGDON-ORR: Summer, yes. We'll get to our 45 and 60 degrees.

VANDA SCARTEZINI: It's not too bad for us. At least without virus since the virus does not like the summertime.

CHERYL LANGDON-ORR: That's right. All right, guys.

TOM BARRETT: See you later.

KRISTY BUCKLEY: Take care. Happy holidays.

VANDA SCARTEZINI: Yeah, take care. Thank you, Kristy.

KRISTY BUCKLEY: Thanks, everyone. Thanks, Vanda. Take care.

VANDA SCARTEZINI: Thank you, Larisa. Yvette was very helpful.

TOM BARRETT: Thanks, Vanda. Bye, everybody.

VANDA SCARTEZINI: Bye-bye.

[END OF TRANSCRIPTION]