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YVETTE GUIGNEAUX:

Hello everyone. Welcome to the NomCom review implementation working group leadership meeting with the ICANN CEO, Göran Marby, on Monday August 30th 19:30 UTC. We'd like to remind everybody that the call today is being recorded, so please state your name for the record before speaking.

I'd also like to state the purpose of today's call. The purpose of the meeting is to discuss the three topics in relation to the work of the NomCom review implementation working group. And those topics would be whether the NomCom staff should report to the CEO as referencing recommendation number 11, whether and how the NomCom can provide input on NomCom resources and budgeting as referencing recommendation number 12, and questions about transparency of the NomCom staff support and review implementation working group, requests for information and documentation relating to recommendation 24.

So now that we have the purpose, let me get the agenda slide on screen. And Tom, I will turn it over to you, and Cheryl as well.

TOM BARRETT:

Thank you, Yvette. Thank you so much for that. And Göran, thanks for [joining us on the] call today. As Yvette said, we're going to cover three recommendations today. Again, as you recall, back in April or so, 2018, the independent evaluator did their NomCom review, it generated 27 recommendations, and after a feasibility study and implementation

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plan, we're now in the final phase of implementation itself. These are the three that we think are most of interest to ICANN Org.

So why don't we just jump right into recommendation 11? The independent evaluator received—their assessment was that the NomCom staff who at the time—and I believe still do—reported to ICANN legal was perhaps not the best reporting relationship for the NomCom staff. They suggest the NomCom should be accountable to report to the office of the CEO. The justification was that the CEO is responsible for overall governance and influencing and implementing organizational strategy and therefore, thinking critically about the future in terms of what ICANN will look like and what ICANN will need.

So that was their suggestion and that's what we're trying to implement with NomCom review recommendation. Do you have any thoughts on that?

GÖRAN MARBY:

I think it's a couple of misunderstandings to be honest. And first of all, I'm in charge of everything. I'm the ICANN CEO, the legal CEO, president and CEO. Everybody reports in to me. Any action that is taken by anyone working for ICANN Org, they are responsible to me. I'm the only one responsible for the outside. That's why—you might remember that there were criticizing ICANN staff, and I said you can't criticize them, it's me you criticize. The only one who can criticize my staff is me. You can always criticize me.

And that is the fundamental how to run the ICANN Organization. And then I can't have 410 people reporting directly into me. And therefore, I

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delegate. And everybody who works for ICANN has a delegation for me to do something. I'm always in charge, I'm always responsible. And we work as a collective in the executive team and never shy away from my responsibility.

I also have the ability to change the organization as I would like. As you've seen since I joined, I have done a lot of changes to the ICANN Organization with different reporting line, new processes, you've seen new managers coming in, and that is a flexibility I always need to have to optimize the work we do so we can do good work in a sufficient way.

The thing that really occurred to me was that, what is the problem they're trying to solve? Because I don't think I ever understood, even speaking to them, what is the problem? Because that was never ... There can always be discussion how we can do things better, but it felt a little bit to me like coming up with a solution that was not very well defined. So that would be my answer to it.

[They today] report into John. And John is not only Legal, remember that. He's also my deputy. John has the unique role, together with Theresa Swinehart, they actually speak in my name when I'm not available. Or actually, anytime—they are deputized by me. So actually, in a way, they are all reporting into the office of the CEO because in that role, both John and Theresa are part of the CEO office.

CHERYL LANGDON-ORR:

So Göran, it seems to me like you've just given us the solution to what is our concern. Our concern is this is a recommendation we need to

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implement, and what you've just very clearly articulated—particularly the last part regarding delegated authorities—is all we need to make clear, Tom, in a way that allows us to say, “And this is how this recommendation is implemented currently.” At least that’s how I would approach it.

TOM BARRETT:

Yeah, and if I recall, the main motivation behind this was—and again, I think a lot of this may have been solved by other recommendations—is that the NomCom has historically held things very close to the vest in terms of confidentiality, so much so that there's very little institutional knowledge within the NomCom. And I think it was perceived that by reporting into the ICANN Legal, that they exacerbated that, so to speak. And in a way, the NomCom staff perhaps weren't as sharing of information with the NomCom and they perceived ICANN Legal to be the reason for that.

GÖRAN MARBY:

That’s strange. But I remember when I joined ICANN, there was a lot of misunderstanding back in 2016, which sometimes feels like 200 years ago. There was a lot of misunderstanding of the role of Legal within ICANN. I think we cleared up most of them during this time.

ICANN Legal is not only a resource for ICANN Organization, it’s a resource for the whole community when it comes to legal issues. Someone told me once that, “Yeah, but Legal is the one who’s responsible for that ICANN Legal issues.” And I said, “No it’s not, it’s me and the Board.” They're a vehicle to do something.

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So I think that might be a misconception also, the role of Legal. But the point is that they all report into my deputy.

TOM BARRETT:

Okay. And certainly, the perception is that the NomCom in a way is serving a function to the Board. I think that's where people are confused perhaps about who ICANN Legal's working for I guess as part of the NomCom due diligence, and maybe we can somehow communicate that better.

GÖRAN MARBY:

You know this, and Cheryl, you and I talked about issues like this many times. You and I haven't, Tom. But first of all, I think you'll agree that it's hard [inaudible] organization the way that I think fits. And if people don't think I have the right organization, I should probably do something else.

But part of it is also it is important to recognize that we deal with confidentiality a lot, and we do that for good reasons. Not only legislations like GDPR but also to make sure that people don't get hurt in the process. And also, there are business reasons sometimes. We are an extremely transparent organization.

And I would like to say that NomCom doesn't work for the Board. NomCom works for the community. The NomCom's role in that sense is to provide Board members to the Board. And that's why we always—the Board—I've been in contact—have been very good at this, to make sure that NomCom-elected Board members don't interfere or have any

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information about what happens in the NomCom, because they will be at one point either reelected or not reelected from the NomCom.

So it's not a Board function, it's a community function. That's actually from the bylaws as well.

CHERYL LANGDON-ORR: So Tom, I think we've got our solution, really, on Rec 11.

TOM BARRETT: Just to recap, that solution is to pretty much maintain the status quo but to articulate better what that is.

CHERYL LANGDON-ORR: The delegated authority.

TOM BARRETT: Yeah. I'm fine with that.

CHERYL LANGDON-ORR: Great.

TOM BARRETT: That works for me. Should we go on to the next agenda item?

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GÖRAN MARBY: Oh, budget, my favorite. And actually, it is my favorite to my staff—they don't understand my love for budgets.

TOM BARRETT: So the challenge of this recommendation is that the budget cycle occurs a year prior to the NomCom it's going to impact. So the challenge has always been, for the NomCom leadership, they arrive at the annual general meeting and their budget has always been set for them, say, ten months prior to that. So there's not a clear process on how to make sure that they have input to future budgets. There's not a very formal process for that.

I think, as we'll get into the next recommendation, 24 about the standing committee, I think the standing committee will address this budget recommendation because it'll be a standing body of former NomCom folks who are proactively engaged in the budget process prior to the NomCom cycle that it's going to impact. So I feel like the standing committee will solve this problem. Do you have any thoughts, Cheryl?

GÖRAN MARBY: May I say something?

TOM BARRETT: Yes, please.

GÖRAN MARBY: The budget process in ICANN is what the budget process is, because it is so strictly done—it takes 18 months to make a 12-month budget in

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ICANN. And at the end of that, you have the empowered community that has a say about the budget. There's no shortcuts to be done when it comes to the budget work. It is what it is.

And a NomCom can recommend into the budget work and it goes into the overall budget. Think about it, Tom. There are many who would like to have their own budget so they can play around with it, so they can do it differently, but the strictness of the rules of the budget process are really hard. And I think they're tough for good reasons. I don't disagree. I can disagree with the length because we actually do the IANA budget first and then we do the ICANN budget, and then we do the ICANN budget and the IANA budget together, which I happen to think ... Everybody knows that I think we should change that.

But the point of the matter is that's the budget process. And then you have what we call the additional budget requests, the ABRs which then has to happen—which Cheryl is a great fan of and utilized many times—and in that budget, depending on how much money we have, now we have said budget, now we have this amount of money, things always move around a little bit. Then we have the ABRs, we have a process that we go in and in a very transparent way say, okay, these could be additions.

But it always happens before. And I don't have all your long history with this, to be honest. But so far, I've been active with the NomCom and I've been involved—regardless of the fact that it reports into someone else, I often get involved in this. I think that we've been working with this particular NomCom and said, “Okay, you have this problem, let's fix it.”

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Yes, sometimes we have said no to things that might be out of scope for the NomComs, but I don't think that any NomCom as far as I [inaudible] has complained. We added more meetings, we added more resources to it. And I don't think we ever ended up saying the NomCom couldn't fulfill its purpose because it didn't have enough staff or money to do its work.

But so I just want to say that there is no way, until we sort of change the underlying budget process with the empowered community at the end of it, to do budgets differently. Not my decision, but I happen to support the way the community so strictly decided about how to do the budget process, because we are a not-for-profit organization and we have to be transparent.

So whoever comes up with a proposal has to do that to be a part of the ICANN budget process, because that's the only place, it seems, or it could be an additional budget process through that process, or when everything is said and done, a problem arises during the actual NomCom and we say, "Okay, let's probably fix it." You wrote the rules for me, by the way.

TOM BARRETT:

Thanks, Göran. Go ahead, Cheryl.

CHERYL LANGDON-ORR:

Thanks, Tom. So Tom, you asked me, did I have anything else I wanted to say? And what I wanted to say is I do actually agree with your introduction, Tom, that the very particular review

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recommendation—which Kristy did put in chat—which does say what it is and that’s what we’re supposed to try and look towards implementing, in my view—along with Tom—I think what we have with relationship to recommendation 24 which is to do with the standing committee which is NomCom veterans—only four of them, I’ll hasten to add, it’s not bloated—and a constant liaison with the current leadership team of any given NomCom may defuse the concerns that some leadership and some NomCom leaders in the past have had. And I’ve heard them and seen them in NomComs I’ve been involved with, so it is a perennial issue that keeps popping up each now and then.

But more importantly, it actually will allow us to implement what Rec 12 wanted within that standing committee. So it’s another one of those, I think we solved it as long as we can report how we’ve solved it properly.

TOM BARRETT:

Right. I agree, Cheryl. I think it makes a lot of sense. Did you want to say something, Göran?

GÖRAN MARBY:

I’m just thinking that the NomCom can provide input on future budgets, and the NomCom leadership has the ability to do additional budget requests. And there’s nothing that prevents—it’s the word “budget” that is the problem here because that’s a big biggie—because it’s in the bylaws. I see that Xavier now raises his hand. I’m just waiting for him to jump in on this one.

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XAVIER CALVEZ:

Hi Tom. I wanted to offer the idea that I think the idea of the control over the budget to a certain extent—and I know we're talking about input over the budget here, but control over the budget is often mistaken as the ability to require or request support and service. And I think that whether it is through the steering committee, whether it is through the leadership of the NomCom at any given point of time, to me it doesn't matter that much. What I think is important is that that leadership in both [inaudible] bodies can provide a sense of the service and support that is needed to the NomCom in this case—and I had this conversation many times over the past years with other organizations as well—so that that service can be incorporated in the operating plan and therefore the budget of the supporting staff organization. In this case, it's the NomCom support under John.

But I think there absolutely be understanding of what the budget is and why it's designed the way it is, and that is very easy for the support staff to provide that visibility. But simply being able to express the needs for support so that then it can be taken into account in developing the budget I think is really what matters. And whether it's through the steering committee—which is great to have the experience of the past members—or through the leadership during the year during which the leadership has that authority is also possible. Both are possible. It shouldn't be one or the other, it should be probably both so that then the support can be considered and given.

I'll tell you it's rarely an issue of lack of budget that something is not being done. It's not a lack of resources, it's whether or not it's the right thing to do that may lead to doing or not doing something. And I think for example—take the example, which I've heard many times, of, “Oh,

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we need a third or fourth meeting face-to-face to be able to do our job so we need more budget for that.” And that’s the type of examples that it’s not the money that’s the issue, it’s whether this is the right thing to do or not.

And I think that the leadership can provide input into the services that are required. The steering committee, if it’s created, can do that as well so that there is an agreement found on what type of support, and then the money can be allocated to it. But the money is not the issue. This is a mistake to think that the money is the issue. It’s what’s the right thing to do that’s the issue. And I think certainly, the experience of that steering committee members of prior NomCom leadership will provide, I’m sure, a lot of visibility, a lot of help in defining that. I’ll stop here.

TOM BARRETT:

Thank you for that. Yeah, I agree that—the current process, one is not exclusive of the other. So obviously, the current NomCom leadership, when they see the need, will make that budget request. I think there is a perceived psychological hurdle for making an out of band request for funds that I think sometimes holds people back. So having the formal process described here I think complements that and removes this psychological hurdle people have about, well gee, we didn’t anticipate this, we’re going to get all kinds of pushback because why didn’t we think of this earlier, etc.

So I think that’s why the formal process makes a lot of sense. There’s also several items that have long lead times. The hiring of consultants for example, either for training or evaluation or recruitment, there’s a recommendation here in the review for a marketing plan which involves

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running advertisements in different periodicals. So a more formal process to this I think would help streamline some of the budget requests that come out of the NomCom.

XAVIER CALVEZ:

Thank you. if I may add something, because I think you're pointing to a lot of timing issues, which is either we didn't know before or what we know today will only be able to be reflected in the future and we'll be gone by then, or it may not have the same effect by then.

And by the way, I think that timing issue, it's not a NomCom-specific issue. Everybody at ICANN has that issue, and it's normal. When you plan ahead, inevitably, there are differences between the time when you plan and when that plan becomes into effect.

Now, we have mechanisms to help with that. For example, every budget year, we incorporate into the budget an amount of budgeted expenses that aren't allocated to anything or to anyone in particular. Why is to give us flexibility because there's always things you don't know that are going to happen, and they will happen. It's always going to be the case. Of course, we can't all predict the future accurately. And that's called the contingency. That contingency is there to help be able to face expenses that were not possible to plan for or simply, we may have planned to hire a consultant to do something and we thought it was going to be costing \$50,000 and it's going to cost \$60,000. Okay, fine. That should not prevent the work to be done. And therefore, we have the contingency for that.

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So I think that the psychological barrier that you mentioned is actually probably a healthy caution that everyone is applying to—if there's a budget, we don't want to spend more than the budget in sum, which is completely fair and anyone should be congratulated for that fiscal responsibility.

At the same time, when we have a budget that's developed so far in advance, then we need to have flexibility. The contingency is there to provide that flexibility. And I think that as the NomCom uses the guidance of the staff as well, everyone should learn, "Let's try to do with the budget. If we think that the right thing to do is not having enough resources in front of it, let's make then a request for more resources to do the right thing. And that is always possible in our budget process, and I think the NomCom needs to know that so that everyone knows that that possibility exists and we should allow ourselves to want to do the right thing and to give us the means to do the right thing when that right thing is not planned for already.

TOM BARRETT: I agree, absolutely. We need to make sure they have that ability. Cheryl put a comment in the chat, if you're not able to see it.

GÖRAN MARBY: Just one comment. In my years working with and supporting NomCom through my teams, every time we [inaudible] they've been thanking us for the resources and thanking us for what we provided to them. Even if it's been [sketchy during the year,] not everybody is always happy, but they always came back and said, "Okay, it worked out." The biggest

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problem within the NomCom has not been about resourcing, and it's been other issues. We worked very hard together for instance during the COVID situation. It's been tough for them and everybody.

So I just want to point out that whatever problem we have, we make sure that we sort out the problems. But I think Xavier, as always, explained it, so I always learn something every time I listen to him. Okay, so are we done with that one?

TOM BARRETT:

I think we're done with it. As you say, the standing committee would help address any issues that NomCom feels like they're experiencing from their side. So the next agenda item does in fact refer to recommendation 24 which is the standing committee, and the standing committee actually, I think its sole function is to help build the institutional memory of the NomCom and to provide some continuity from year to year so that it can essentially have a process of continuous improvement.

So that's really what recommendation 24 is all about. We have a charter that has been drafted that's going through some extensive review by ICANN Legal to make sure it's rigorous and has the right sort of governance principles, and we think this will probably have the biggest impact among the recommendations in terms of improving the efficiency and productivity of the NomCom.

So the agenda item here has to do with questions about transparency of NomCom staffing support and working group requests for information

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and documentation. And I think it's been pretty good. I think we had good feedback so far from ICANN Org and I expect that would continue.

GÖRAN MARBY: You don't necessarily want a comment from me on this one, or ...?

TOM BARRETT: I would love a comment, Göran. Please.

GÖRAN MARBY: ICANN staff reports into me. I'm responsible for anything that has to do with them. My job is to provide you with the support you need. And as we talked about resources before—and how we do that—ICANN role has a very delicate role in this one because we need to make sure the integrity of the work but also for the people who do it. So I'm not really sure I understand the request. I know it's not from you. I know it's from the review team. But I'm not really sure I understand what this is doing here, to be honest.

TOM BARRETT: Yeah, no, actually, I'm not even sure if it's from the review team. The support we've received has been fantastic for the review. We certainly don't have any objections or complaints about the support we're getting. This may have been added by staff based on one comment, which I can't recall what it is at this point, but we don't have any objections or disagreements about the support we're getting.

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GÖRAN MARBY: I'm very happy about that, because of course, I take credit for my staff as well, all the good work that they do. No I don't.

TOM BARRETT: Yeah. I really want to say also I appreciate they've actually even increased their efforts recently. We're hoping to accelerate this review, see if we can't complete it by the end of the year. It's been about four years or so for Cheryl and I. So we'd love to declare victory and transition this to the next phase. And I think the staff are helping us get there.

CHERYL LANGDON-ORR: Tom, to me, it seems that—I mean, recommendation 24 which Kristy again has very helpfully put into chat, the Rec 24 is all about getting this empowered body to give that continuity, etc. So I think the actual recommendation—unlike the other two, the recommendation is not at all what this was about.

I honestly do not understand what this particular bullet point is doing in this particular conversation with Göran. So if staff can help me understand if I've missed something, I would greatly appreciate that.

LARISA GURNICK: Thank you, Cheryl. Hopefully, I can clear this up, and I think it'll be an easy item. I think that throughout the time of discussing the standing committee and some of these elements, perhaps at the onstart, it

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wasn't always clear whether this recommendation was really geared toward institutional knowledge and documentation and efficiency within the NomCom itself, which is how many of us had interpreted it, and at some point, it sort of became maybe a little mixed up and not totally clear whether somehow it was also in your all's view was intended to apply to the way the NomCom support staff functions. But I think that with the progress that's being made on the standing committee charter and the documentation and so many other things that have been happening over the last several months, it does not seem like that's a problem any longer. But since we've had a chance to bring this group together, we just wanted to ensure that there's no open items around that as it relates to transparency or documentation or processes that are being followed by the NomCom support staff specifically. Thank you.

GÖRAN MARBY: Thank you.

CHERYL LANGDON-ORR: I think you should just be striking this one off the agenda for future reference. It seems like a non-issue. Recommendation 24 is still important, but questions on transparency, I don't think we need to go down those pathways at all.

GÖRAN MARBY: Thank you.

TOM BARRETT: Yeah. So that's all the agenda items we had today. Was there anything else, Any Other Business that people wanted to bring up?

GÖRAN MARBY: I think that I like what you said. Let's declare a victory and move on.

TOM BARRETT: We would love to.

CHERYL LANGDON-ORR: We've got a little bit more to do before we can declare total victory. there's a few little bits of information that we need to dot a few i's and cross a few t's on. But we're getting there.

GÖRAN MARBY: My mother used to say—and [I already quoted her,] rest in peace—that you should always take the opportunity to celebrate an advance, because the only thing that can happen is that you were happy unnecessarily.

TOM BARRETT: Or prematurely. Yeah. No, we're definitely going to see this through, but as I say, we hope to get it done fairly quickly. We're at the final legs of it.

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GÖRAN MARBY: We all have the same aim. ICANN Org, you, and the community, and that is that we have the best representatives from the community and the different parts of the community that NomCom has a charter for. And that is important today, it was important yesterday. But I'm going to say it's going to be even more important in the future.

So thank you for doing this work and thank you for your diligence in this, and thank you for a very good conversation.

TOM BARRETT: You're welcome. Thank you for coming today. We appreciate this open conversation and absolutely won't hesitate if we feel that another call is appropriate. But I feel like we're in good hands with—

GÖRAN MARBY: I'm always here.

TOM BARRETT: All right. Thank you very much.

GÖRAN MARBY: Thank you, my friends.

TOM BARRETT: I think we're on a good track.

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GÖRAN MARBY: Good. And good luck with your testing, and hope it's negative.

TOM BARRETT: Thank you.

CHERYL LANGDON-ORR: Yes, let's hope it's negative, indeed.

LARISA GURNICK: Indeed, Tom, keeping our fingers crossed for you. Be well, everybody.  
Thank you.

TOM BARRETT: Thanks, everybody. Bye.

GÖRAN MARBY: Thank you.

KRISTY BUCKLEY: Thank you. Bye.

CHERYL LANGDON-ORR: Bye for now.

**[END OF TRANSCRIPT]**