
YVETTE GUIGNEAUX: Hello, everyone. Welcome to the NomCom Review Implementation Working Group Meeting #94 on March 24, 2022 at 19:00 UTC.

Joining from the working group today on this call, we have Tom, Vanda, Cheryl, Dave, Ejikeme, and Remmy. Joining from the ICANN staff today, we have Evin, Larisa, Jia, Teresa, and myself, Yvette Guigneaux.

We'd like to remind you that today's call is being recorded. So please state your name prior to speaking for the record. And I also want to find out really quick if anyone has any updates to their SOI. Nope? Okay. All right. I think that about does it for me so I'll go ahead and get the agenda on the screen. Tom, I will turn it over to you.

TOM BARRETT: Thanks, Yvette. Just to repeat for everyone else's benefit, I'm actually in the car and will likely fall off unexpectedly. Cheryl will be able to keep the meeting going. But here's the agenda. I know you said that Sam might be 10 or 15 minutes late so you want to maybe shuffle this around a little bit, Evin?

EVIN ERDOGDU: Sure. Yeah, that sounds good. We could maybe do item four first on the ICANN73 Prep Week webinar debrief of that, if that sounds okay.

TOM BARRETT: That'd be great. That sounds super. Thanks.

Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.

EVIN ERDOGDU:

Sure. Okay. Actually, I could then share my screen to show notes from that debrief, if you don't mind, Yvette. Okay. So here we go. So these were some notes that were distributed to the working group earlier this week. As promised, we took notes from that session just to kind of see how it was going, capture the discussion points, any potential decisions or outcomes, and any feedback that the group has from that. As everyone knows, it was a great Prep Week webinar, it was very smoothly facilitated by Tom and Cheryl, and there was plenty of feedback during the Q&A from community members and others who participated. The highlights were the progress made over the past five years of the review implementation and the current status of where the group is with remaining work items and the upcoming remainder of the work plan.

There was one question that was raised during the webinar from someone who wondered about the draft NomCom Standing Committee Charter, wondering if it could be shared publicly at this stage. Of course, the working group here has access. It is open for people to view but we didn't know if it would be appropriate. Perhaps we could suggest sharing it after the OEC feedback and any final comments are addressed, and then we could include that, of course, in the upcoming public comment for the working group. But these are just generally the notes that were taken. Everyone has access. I didn't know if others had any comments. Tom or Cheryl, any feedback from your end as well? I'll just turn it over to you. Thanks.

TOM BARRETT: Thanks, Evin. I don't have any specific comments. How about you, Cheryl? Cheryl might be multitasking on another call. Okay. What was your takeaway, Evin?

CHERYL LANGDON-ORR: Sorry, I was multitasking. Tom, you're correct. But at multipoint, Evin's screen, for whatever reason, I had her name over the top rather than being able to reach my unmute button. My apologies for that. I was pushing and pushing. I think we can continue to move on. I don't have any additional comments.

TOM BARRETT: Thanks, Cheryl. I can't see hands, Evin. I don't know if anyone else wants to weigh in.

CHERYL LANGDON-ORR: I'll watch the hands, if you like, Tom. I'll let you know if there's hands.

TOM BARRETT: Evin, I wonder if you or Teresa or Larisa or Yvette had any thoughts or takeaways from the webinar.

EVIN ERDOGDU: Thanks so much, Tom and Cheryl. Yeah. As noted, I think overall, it was just a wonderful Prep Week webinar. It was well attended, great engagements, good questions, great facilitation. I think everything was clear as well. So I guess the only note was essentially the charter when

to share it. So I'll just kind of make a note that maybe we can defer until it's ready to go for public comment a little bit later on. But otherwise, the feedback from our end was very positive. I don't know if Teresa or Larisa or Yvette or anyone else has any comments. There we go. Larisa is saying in the chat she agrees and Teresa as well. So yeah, it was a great webinar. And Dave, too.

TOM BARRETT: All right. Thanks.

VANDA SCARTEZINI: Good work.

EVIN ERDOGDU: Sure.

VANDA SCARTEZINI: Yeah, it's a good workshop. Yeah.

TOM BARRETT: So in terms of putting it out for public comment—I know this is a later agenda item—it's still not clear to me how we coordinate this with the OEC because I thought we want them to handle the public comment. I don't know if we're trying to do something in parallel or if we're supporting their effort.

EVIN ERDOGDU: Go ahead, Larisa. I see her hand's up. Thank you.

LARISA GURNICK: Hi, everybody. Yeah, I think with Sam's upcoming feedback on the unaffiliated director items, you're all getting considerably closer to having all the proposed language for the Bylaws amendments ready. So as we proposed before, the thought was that everything will go out as a package of proposals having to do with the implementation of this team's work, and it will flow through the OEC. But it'll all be done at the same time to make the engagement and understanding hopefully easier for community members so that they can take a look at the full package of proposals and provide input on that. So staff will support that effort and will work with the OEC to kind of make that happen as part of the next steps that the Board would take to community consultation on anything that requires Bylaws amendments. I hope that that makes sense.

TOM BARRETT: Yeah. I think that makes sense. So it sounds like we're not going to try to do something independently. We'll just wait for the OEC to turn out for comment.

LARISA GURNICK: That's correct.

TOM BARRETT: Okay.

LARISA GURNICK: It would be the Board putting it out for comment. But the gateway to doing that is through the OEC. So you're almost correct there.

TOM BARRETT: All right, cool. All right, great. Thanks. Shall we move to the next agenda item?

EVIN ERDOGDU: Sure. Thank you, Tom. So I think we are waiting on Sam to join us, actually. She is just coming from another meeting. The two items that we had on the agenda: to have her input on where the ongoing discussions regarding Recommendation 27 and also the draft NomCom Standing Committee Charter. There was other feedback from the OEC regarding the draft Standing Committee Charter, so we could look at that until she joins, if that sounds okay.

TOM BARRETT: Yeah, that'd be great.

EVIN ERDOGDU: Okay, great. Just give me a moment. I will share my screen again. Okay. So this was the feedback we just put into a Google Doc, just for the group to be able to view and comment on easily, as needed. It was quite minimal feedback on the charter. The first feedback was just a question of terminology to kind of clarify the wording "leave of absence".

Someone had noted that there was a little bit of confusion that a leave of absence is considered a permitted and kind of formal absence. The sentence where that term was used was discussing when a NomCom Standing Committee member fails to attend to regularly scheduled meetings consecutively without prior notification to the group, this would constitute a leave of absence. So the idea was maybe suggesting changing the phrase to unexcused absence. But this was just the first note of feedback. So I'll pause and let you weigh in, Tom, Cheryl, and others in the working group, what do you think about this feedback. Thank you.

TOM BARRETT: Thanks, Evin. Does anyone have any comments on this?

VANDA SCARTEZINI: Yeah. For me, it's more clear even when you translate it to other language. Because a leave of absence may be translated in a way that nobody will understand what it means. So unexcused, the sense is clear.

TOM BARRETT: Thanks, Vanda.

CHERYL LANGDON-ORR: That's important, Tom. From my perspective, that acid test of translation is really important. So I think we should get behind Vanda on that one, for sure.

TOM BARRETT: All right. Good point. Thanks, Cheryl. Anyone else? Dave, I see your text. So you like unexcused absence as well. So it sounds good, Evin. Let's go with that suggestion.

EVIN ERDOGDU: Great. Thank you, Tom, Cheryl, and Vanda. That was a good point, too. And Michael also piping in. Thank you, guys.

Okay. So then the second minor feedback, there was also a majority vote. The sentence that was referenced was just kind of wondering about what is majority in the sentence. It was saying non-performing members may be removed by a majority vote of the committee. But this was kind of a minor observation. In practice, it would likely be very apparent to the three other members, whether the fourth is not meeting their responsibility for attendance. And the Standing Committee is intentionally small in number in order to navigate such situations. So we just thought that we could provide this feedback back to the OEC, just saying that in practice, this would likely be mitigated or maybe a non-issue.

CHERYL LANGDON-ORR: Consensus will rule the day here.

VANDA SCARTEZINI: Anyway, to go to OEC is a good way to avoid any kind of groups together to expel someone and those kinds of things that the

community normally raise, “Well, I had this or that and the group get together and expelled me,” that’s something that we need to avoid. So sending the information to OEC will be kind of formalizing the non-performance.

CHERYL LANGDON-ORR:

Understood, Vanda, but I think such an action, as extraordinary as I trust it will be, my problem is the term “majority vote,” when you’ve got one person absent, and then three left. Come on, guys. What kind of majority here? To pick up on your clicking point, I think it needs to be a vote, not a majority vote, a vote, and in the operations manual there that that vote should be an absolutely transparent one. So their money is where their mouth is, and they have to be able to show that in such an extraordinary issue where they have had to vote for removal, as opposed to take an aside, have a quiet chat, and suggested that they jump before they’re pushed, right? All of that litigation would have gone on earlier on. If you have to go to this extent to remove a member then everyone else should have to make their opinion public, and if you can’t do that, you shouldn’t be on the committee.

VANDA SCARTEZINI:

It’s an extreme situation. But anyway, certainly it will be a report about the causes and the why they are not performing, and what happened, everything. I cannot see this happen, but anyway, it can happen. It can happen.

EVIN ERDOGDU: Okay. Good point, Vanda and Cheryl. Thank you for that.

CHERYL LANGDON-ORR: Nuclear options. Nuclear.

VANDA SCARTEZINI: Yeah. We had one in NomCom, we expelled a member.

CHERYL LANGDON-ORR: Oh yeah. It can happen. It can happen.

VANDA SCARTEZINI: It happened.

EVIN ERDOGDU: All right. Thank you for those comments, too. So then there was just like one other feedback from the OEC. Legal had one point they wanted to share so we'll wait until, hopefully, Sam can join us. But the last note that the OEC had was just a very broad question in terms of removing the non-performing members, wondering if the Board would need to be involved in this. And the simple answer we think is that no, the Board does not need to be involved in that process. It's just that as you were discussing, it's the non-performing members may be removed by a majority vote of the committee. So yeah, I think that was the final feedback from the OEC there. Any comments on that note?

VANDA SCARTEZINI: No. Anyway, it's always the Ombudsman to receive any complaint.

TOM BARRETT: Hey guys, I'm back. Sorry about that.

EVIN ERDOGDU: Oh, welcome back, Tom.

CHERYL LANGDON-ORR: No problem.

EVIN ERDOGDU: I don't know if you captured, Tom, we had just finished the second and third bits of feedback there. So let's see. I'm going to stop sharing unless there are further comments, and maybe we can get the slide back up. Let's see, I do have one comment here. Just to confirm, by the way, on the OEC feedback, should we remove the word majority? Would that kind of help make things—

CHERYL LANGDON-ORR: I would prefer you to remove the word majority. But I'd like everyone else to weigh in on that. Thanks.

EVIN ERDOGDU: Sure.

TOM BARRETT: So what would you replace it with, Cheryl?

CHERYL LANGDON-ORR: I wouldn't. I'd leave it as vote, and the vote needs to be transparent. So you can add the word transparent vote. But if you've got one recalcitrant who—you haven't been able to successfully get to jump as opposed to be pushed, and you've only got three left, what does the majority mean? That's silly. All three people need to vote and their votes need to be transparent.

VANDA SCARTEZINI: Maybe justify it, justify the vote. Each one could you justify their vote. Because it's an extreme situation, so it's something different. We could have only justified votes, and that's it.

CHERYL LANGDON-ORR: Exactly, Vanda. So timing the situation, just as you would if you were abstaining, you have the right to make your basis for your vote clear. If you're in a judiciary process, you would be making a supporting statement. If you are at this end of such a nuclear action, you should be able to say what you've done and what you've done publicly. So if two say yes and one say no, the whole of ICANN will know why two say yes and one say no, and that is the same as the majority but it isn't the same.

TOM BARRETT: Right. So does a abstain count in determining how you calculate majority?

CHERYL LANGDON-ORR: You don't calculate majority. That's the whole point. If you had a split and there was an abstain that gave a rationale, then actually that's a good point. That's one Sam might need to pick up on, Evin, in some contexts an abstain will count towards the no vote. Here we'd need to make sure it does not count towards a no vote. It should simply count as an abstain. So that's a little tweak. Sam will be able to put language around that but I've seen that happen in ICANN before, an abstain in the wrong side.

VANDA SCARTEZINI: Sam just joined us. We could listen to her, what she thinks about this kind of discussions we're going to have because I don't know here what we have read, Sam.

EVIN ERDOGDU: Thank you, Vanda and Cheryl. Yeah. I noted that the abstain should not count towards a no vote. Sam, welcome. We had just reviewed OEC feedback on the draft NomCom Standing Committee Charter, and they were discussing slight edits to that based off of the feedback. The first being—actually, I could display my screen again. Yvette, if you don't mind, I'll just start doing that. Just as a quick recap. For the first item, those group consensus that the word leave of absence would be changed to unexcused absence. And for the second one, of which we

were just discussing, it would be that we would remove the word majority, just to clarify, and that abstain should not count towards a no vote. So just so you know that's kind of where we are in the discussion.

CHERYL LANGDON-ORR: Evin? Vanda very appropriately was stating a justified vote.

EVIN ERDOGDU: Yeah, okay. Yes. Thank you. I'll make note of that as well. Okay. So let me just stop the share there. Was there additional feedback? Would you like to weigh in on that, Sam? I think there was a comment from Legal regarding the obligation for the Nominating Committee chair to appoint an associate chair. Would you like to provide that feedback there?

SAM EISNER: Sure. Let me just pick up on a couple of things that I heard when I came into the call. Cheryl, I think you were channeling me perfectly with the question about does an abstention count as a no vote? So we can make sure that there's a reference in here that if there's an abstention, it doesn't count as a no. If that's the intention, it's always good to be clear about that because sometimes there's confusion.

CHERYL LANGDON-ORR: Oh yeah.

SAM EISNER: Seeing the term—and I'm sorry, I missed the conversation so I'm not sure fully when I came in—but a justified vote, I think there needs to be some more information in there about what we mean by a justified vote because that could be a term that's subject to a lot of different interpretations.

CHERYL LANGDON-ORR: We'd have a glossary, wouldn't we? We'd have a set of defined terms.

SAM EISNER: We could have. Yeah, we could have a definition section within the charter, that would be fine, but we'd have to make sure that that was defined because I'm not sure exactly what it means. But it sounds like you all know what you intended by it.

CHERYL LANGDON-ORR: Because Vanda does the interpretation test. So Vanda gives us language which translates well. The option to justify is what usually exists in an abstain vote. In other words, if you abstain, you have the right to explain and have on the record why you abstained. In this case, you are required to have on the record why you vote in a particular way. Be that may, nay, or abstain.

VANDA SCARTEZINI: Yeah. You cannot say yes or no. You need to say no because of this and that, and yes because of this and that. And this is mandatory in some way.

SAM EISNER: Understood. So it really means a vote in which all people participating in the vote, no matter whether their vote is yes, no, or abstention, are required to provide a statement to justify for the rational.

VANDA SCARTEZINI: Correct. Yes.

SAM EISNER: Okay. That makes sense.

VANDA SCARTEZINI: Yeah, because this extreme situation. We need to be very transparent on that.

SAM EISNER: Right. Got it. Okay. That makes sense. I think we can easily work that in. So then the other point that we had identified as we were just doing a final view over the charter and taking a look at some of the OEC points was we have a defined role within the Standing Committee Charter, as it's currently drafted, that specifies that there's a defined role for the associate chair to play each year on the Standing Committee. However, one of my colleagues in the legal department rightfully pointed out that the Bylaws actually don't require the Nominating Committee chair to appoint an associate chair. It's a permissive as opposed to a requirement.

So while we have not, in any recent history I'm aware of, had that position not being filled, we think that it makes sense that because it is a permissive situation, we should probably also have a defined fallback in the charter. So there we were thinking that the fallback—and again, this would only be the fallback, right, because I think there are many reasons why the associate chair would likely be the right person to sit in this role, because the associate chair also tends to be someone with history with the NomCom, etc., that only if there is no associate chair appointed that it makes sense to have possibly the chair-elect. This was our thought. It's just a recommendation. Of course, you guys can identify other roles. But there is that chair-elect position that's a requirement for the Board to fill so we know that this is a required position that would make sure that there was never a loss of that liaison role between the NomCom and the Standing Committee.

CHERYL LANGDON-ORR:

So there's another advantage to that, just as you were saying it. That's a great catch. Thank you for that, Sam. Sorry, Sam, I'm in another meeting as well so you're only getting half my brain. But it is not lost on each, shall I say, that this would also be an excellent situation even if it ended up in that fallback. So if for whatever reason it ended up in the fallback, what a wonderful opportunity would it be for a chair-elect to be totally immersed in this very important keeping of the history and material and operations procedures, etc. I mean, it would be a wonderful situation for the chair-elect to really learn this stuff. So I think A) great catch and B) no downside even if it happened. Thanks.

TOM BARRETT: Thanks, Cheryl. I know we do have hands up. Michael and Vanda, then I'll add myself to the queue as well. Michael?

MICHAEL GRAHAM: Yeah. Can you hear me?

TOM BARRETT: Yes.

MICHAEL GRAHAM: Oh, great. I wasn't thinking along the line that Cheryl just brought up. My concern was for the chair of this, it seems to me that we really do want someone with experience, which tends to be the associate chair which, again, it's not written in, but traditionally, it's been the past chair so that they would have that knowledge of the operation of the NomCom. Even though I presume, I don't know historically, but I presume that in most cases, the chair-elect tends to be someone who has participated in the NomCom. I'm not sure I could see a situation in which a chair-elect might not have the experience that would be helpful with this. I wonder if it's to not simply be that in the event that there is not an appointed associate chair that the current chair of the NomCom could appoint someone else. I don't know whether or not we should restrict it to that possibility to the chair-elect or just have an open determination to be made by the NomCom chair. Thanks.

TOM BARRETT: Thanks, Michael. Vanda?

VANDA SCARTEZINI: In my opinion, the regular group will have the person that was the last chair in the NomCom. So the fresh view from NomCom will be there. So I believe that way, we don't need this associate chair in some way. For the other hand, I agree that chair-elect could be interesting. We here in the LACRALO, for instance, we are using this denomination for chair-elect to have those people working together with a chair for one year or two years, in our case, to be read to assume the position of the chair, because to avoid people that has no clue about what's going on and just entered as a chair. So it's something that could be very interesting opportunity to get people involved and open to sit as a chair. I believe that the decision of the chair will be from the Board. I don't remember what we decide, but many issues in my head. But what I believe that is the whole group can elect their chair. And to have someone as chair-elect with less experience, it could be very interesting for the people to be more engaged and be ready to be chair. So I don't remember if the ICANN Board will be the one to define who's going to be the chair? That's a question.

CHERYL LANGDON-ORR: Yes, Vanda.

VANDA SCARTEZINI: Okay. So to have a chair-elect is a good opportunity to prepare someone to apply as a chair in the next term.

TOM BARRETT:

Thanks, Vanda. You actually raised some interesting questions. I was going to suggest that, obviously, the idea here is some continuity with the current NomCom. That's why we specified the associate chair. So my first thought, it really doesn't matter if it's a chair-elect or the chair themselves, but another option to think about is it could be two other ideas. One is it could be a past associate chair or a past chair, etc., or we always assumed that there's no reason why the Standing Committee could not be a training ground for future NomCom leadership. So perhaps we find people who we think would be good chair-elects for the NomCom and get them on the Standing Committee and transition them to a Standing Committee member to be chair-elect of the NomCom. What do people think about that idea?

MICHAEL GRAHAM:

I like the idea of the option if there is not an associate chair of the current chair of the NomCom nominating a past chair or associate chair. I don't like the idea I think of viewing the Standing Committee chair position as being an appropriate place for training. I think it's more a place for guidance and supporting the NomCom than in training for leadership. That's something that should be taking place within the NomCom, I think.

CHERYL LANGDON-ORR:

Can I just follow on to Michael? I think it's also really important that it's up to the sending body, the people sending the liaison, to I think deal with the sub selection if the preferred and charted choice is not available. So that's why I put in chat with some sort of delegated

authority of the chair. It might be another way out of this, but that's very much the same thing to react to.

TOM BARRETT: Thanks, Cheryl. So we're just suggesting that language should give us some flexibility if the associate chair is not available, right? I see hands. Vanda then Sam. Do you have a new hand, Vanda?

VANDA SCARTEZINI: No, sorry. I didn't lower mine.

TOM BARRETT: All right. Go ahead, Sam.

SAM EISNER: Thanks. I think that the idea of giving some delegated authority to the NomCom chair to assist in identifying a past chair or past associate chair to be that link between the NomCom and the Standing Committee could be a way to go. I think it is one of the reasons why using a person that's actually on the NomCom already is because it does have that linkage. And so I don't know what we'd be setting ourselves up for if we invite new people in to be that liaison role that charter envisions the associate chair to serve. So I do think before we commit anything in writing as a proposal to think about the value of that role but also the value, the purity of the NomCom as the appointed entity that it already exists as. So I wonder about the ability to bring in a new person into that and how we would then define their role as how they're interacting

with the NomCom. So that's just the one caution I have. We could build in that authority but I do think it makes sense to think about that potential addition of a new person that's communicating with the NomCom and whether we'd need any sort of defined roles.

VANDA SCARTEZINI: Liaison.

SAM EISNER: Yeah. Because a liaison role tends to be between two existing bodies, right? So appointing someone who's not part of one of the bodies to then be a liaison, what do you do with that? What are the rules that govern that? And how does that impact the NomCom's independence? I think it's something to think about before we finalize how we'd handle this.

TOM BARRETT: Thanks, Sam. Sam, could you respond to the idea of perhaps just letting the chair the NomCom selecting a past associate chair? What are your thoughts on that approach?

SAM EISNER: I think that if we were to go to this freedom for the NomCom chair to select into that role, it makes sense for that to be the role of selecting a past chair, if that makes sense. But I do think the concern I raised about what happens when the person that you're selecting as the liaison isn't actually a formal member of the other body? We can't ignore that

question. But if we agree that it makes sense to bring in someone, a “third party” that that method of selection, the NomCom chair identifying a past chair makes the most sense to fill that role.

CHERYL LANGDON-ORR:

It is a fallback of a fallback position. It’s important, but I also think that at least using a delegated authority model, even if you limit it to past leadership as delegated authority to past the leadership of NomCom, there should be an assumed degree of knowledge for whoever would be the delegate to understand the importance of how NomCom operates the confidentiality aspects, etc. So there’s kind of a little bit of self-regulatory expectations there. That being said, it is not impossible to have a liaison who is a third party to acting like liaison capacity in a manner which does not compromise Nominating Committee operations and procedures, that that would need to be looked after and watched for. That’s all. Sorry, Tom. My apologies.

TOM BARRETT:

No. That’s a good point. I guess I’m not sure. What if the scenario is we have a Standing Committee, remembering that prerequisite just to be on the Standing Committee is past experience for the NomCom, we obviously prefer leadership experience, and so if the NomCom decided not to fill that spot, one of the existing members of the Standing Committee could fill that spot on behalf of the NomCom, in which case, Standing Committee, you will have to go find yourself another member.

CHERYL LANGDON-ORR: But, Tom, that person—if the Standing Committee made the “appointment,” which I think is what I heard you say, then that is not a liaison from the NomCom, that’s a liaison to the NomCom. Sure, they’d understand it. That should not be codified, in my opinion. A liaison from is a liaison from, not liaison to. Now, I would suggest that there should be deep and meaningful discussions with the chair of the NomCom if such a circumstance like this arises. You know what I mean? I just don’t think we should codify that sort of thing. It’s a slippery slope from my point of view.

TOM BARRETT: So we’ll wrap this up. We just want some more flexible language for the NomCom chair to designate someone else.

VANDA SCARTEZINI: Well, may I?

TOM BARRETT: Yeah. Go ahead, Vanda.

VANDA SCARTEZINI: Yeah. Well, the whole activity of the Standing Committee is in some way that overseeing the general idea of NomCom. So the LEA zone anyway should be from—because for us to define someone as a liaison with someone that is for more care, the person have something that will interfere in the situation of privacy and the security of the NomCom as a whole. So, I believe that someone sitting in the NomCom could be

someone that can sit with the Standing Committee to understand what is going on and go back. And it's not associate chair is a kind of a liaison. I believe that this will work very well without interference of the Standing Committee into the NomCom for that year.

So I believe we will need to do analyze this with care because there is no way to put someone interfering or sitting like any liaison, and because the whole NomCom Standing Committee role is more or less a liaison. The work is in there. It's something that adds liaison task more an overview of the tasks that are being performed. So I don't believe that we should have someone from the Standing Committee interfering directly as the liaison. As we understand in the community, liaison will sit in the meetings, will sit in some. We cannot do that in the NomCom. That's my point. Thank you.

TOM BARRETT: Thanks, Vanda. Sam, have you heard what you needed to hear to wordsmith this?

SAM EISNER: Yes, maybe. I think I'm hearing a couple of different things. But we'll try it and we'll come back and test it, make sure that it meets the different concerns that were raised here.

TOM BARRETT: Yeah. I know I threw out some different ideas. I think the consensus is it's really up to NomCom chair to delegate someone else if there's no associate chair. I would just leave it at that. Let them decide how to do

it. I think that's what I'm hearing from everybody. So they can decide if it's some other member or they decide if it's a past leadership member, it doesn't really matter.

SAM EISNER:

Tom, I would recommend putting in a few guardrails because I think as Vanda was talking about some of her concerns, I think we would have some concerns about voting members of the NomCom being appointed to a liaison role between the Standing Committee and the NomCom. Because of the role of the Standing Committee and the guardrails are driven that the Standing Committee is not to impact current selection processes. But I think we can come up with something to help get that flexibility but put some guardrails on it as well.

VANDA SCARTEZINI:

Yeah. But anyway, I agree. I agree, Sam, that the role of a liaison cannot fit into the NomCom relationship. So, I don't know what we can do about that. But for me, the whole task of NomCom Standing Committee is a mix of the whole of liaison overseeing body. This is a complex way to not interfere in the NomCom activities. So that needs to be really clear, if it raises some concerns, never will work.

TOM BARRETT:

All right. Thanks, Vanda. All right, Sam, we'll leave the rest to you to come up with some new wording.

SAM EISNER: Got it. Thanks.

TOM BARRETT: Thanks. What else do we want to discuss?

EVIN ERDOGDU: Thank you, Tom. Thank you for that and thank you, Sam, for facilitating that conversation. On the agenda, we also do have an update on a legal proposal and considerations for Recommendation 27. We could move on to this, if you'd like.

TOM BARRETT: Yes, please.

EVIN ERDOGDU: Great. Okay. Thank you so much. I'll turn it over to you, Sam. Thanks.

SAM EISNER: Thank you. So we're working through the language and just making sure what we return to you is workable language. I wanted to flag something that one of my legal colleagues identified as we were talking about it. When we had previously discussed this, and as we're talking about principles that I heard expressed and going back to the other principles, one of the things that is present in the current language—I know you guys haven't seen it but we talked through it pretty significantly at the last meeting I attended—was this idea that someone meeting that “ultra independence” or whatever word we're going to use for the

unaffiliated director would be reevaluated at each time a new term came up. So every Board member currently has the ability to serve three consecutive terms. So there'll be three points of assessment. So one thing that a colleague noted was that we have the potential for someone to come on to the Board in a non-ultra independent way, that they wouldn't meet that definition of ultra independence. But it could be that because of passage of time, they're no longer serving on an SO/AC Council because they can't do that as part of their Board. Maybe they've divested themselves of their other working contracts or other things that might have impaired their independence. The next time they come up for consideration after the end of the term that they actually could meet that definition at the second term or the third term, for example, if they were putting their hats back in the rain, even though they didn't at the first.

So I wanted to come back to this group and test an idea with you, which is I think we could easily build in a rule that when you serve on the Board, you don't lose your ultra independence by service on the Board. However, you could do something else, right? You could take on a different job that then creates some sort of potential for conflict of interest that takes you out of the ultra independence or something like that. So we would reevaluate every time that that someone put their name back in for consideration to be reappointed for the Board. Have they done anything to remove their ultra independent label that we also might consider adding on to that, but if you didn't enter your initial service on the Board as that ultra independent label, you can't then become ultra independent for your second or third term, that you can't level up, though you can level down. Because what that does is it makes

sure that it helps re-instill the other values that you have for trying to achieve this, which was bringing in new voices, bringing in new views. If someone's already on the Board, we don't need to consider really, are they bringing a new and unique voice or anything? So we think that that might be a way to solve this and to still achieve the values but also making sure that they were upholding kind of the base of what you were trying to achieve. So we wanted to test that with you before we came back with language because it is a slight change to the peer reevaluation at every term.

VANDA SCARTEZINI: Yeah, I believe that that is some questions inside the NomCom about the candidates.

CHERYL LANGDON-ORR: Sam, Cheryl here. I said in chat, I think that makes good sense to me. I like the idea of leveling in one direction and not the other. I'm very comfortable with that.

TOM BARRETT: Thanks, Cheryl and Vanda. With this new information, we have a NomCom-appointed board director whose unaffiliated status changed in one direction or the other when they're up for reelection. So how does this get communicated and what role does it play? I guess this is input to the NomCom to consider? And what do they do with that information?

SAM EISNER:

I think it would fall in, too, and if you recall, going back to how the RIWG was reflecting the unaffiliated status within the Bylaws event, there was a section that was drafted about things that would disqualify someone from being selected or for appointment from the NomCom. We've had the conversation about does this go to all eight selections from the NomCom. Or does it go to a smaller number such as the Independent Examiner? Recommended is three. We take care of helping to refine that. But if we had any number of seats that were reserved to this ultra unaffiliated definition, that it would become a matter of disqualification if you can't meet all of those terms. We talked last time about a bit of an attestation, and so candidates who couldn't fulfill that attestation at a renewal period would be disqualified from serving in one of those ultra affiliated seats. But of course, if the NomCom had multiple seats, we typically see that the NomCom has either three, three, or two given the year, it doesn't mean that the person couldn't be selected to fill a different seat. But there would then be the component obligation on the NomCom to consider who would meet that ultra affiliation for that seat. So it doesn't mean that someone be automatically precluded from Board service. But it does mean that the NomCom would have to consider certain qualifications that would be assigned only to specific seats.

TOM BARRETT:

Thanks, Sam. So, I guess two questions. First is that this implies that if an existing board directors reapply, and on the application form, they have some way to indicate if their unaffiliated status has changed. I guess that should be an explicit question we ask of returning Board members, I guess, implementation of this. But then the second

question, which you were kind of alluding to, is whether or not the NomCom is striving for all eight NomCom positions to be unaffiliated, or they're striving for something less than eight. Has there been any closure on that question?

SAM EISNER:

I think that this is still a matter for the Review Implementation Working Group to consider and provide rationale on if you want to continue going for a number higher than what the Independent Examiner recommended, which was three. Last time we talked about having an aspirational goal but allowing exceptions, and so to that extent, you could have an aspiration to fill all eight seats with ultra affiliated but allow exceptions, which could then lead to all eight roles not being filled in that manner. But if you had a smaller number to try to provide some level of a requirement of unaffiliated directors joining the Board, then that could be seen as something that's more likely to fill, and therefore, not an exception. Oh, well, if we can't find it, we don't fill it, but create more obligation to really look for those. Because we also talked last time about there are some concerns about the recruitment process and whether we could really attract eight separate candidates across a three-year cycle to meet that requirement. So our recommendation from the ICANN Org side would be to track more closely to the three members that were recommended from the Independent Examiner report. But this is a matter where if the Review Implementation Working Group chose to continue with a higher number than that, that clearly it's within your prerogative to do that. We encourage you to have some good rationale to present both to the Board and the

community about that, because that would be one of the areas where public comment where I'm sure there would be a lot of activity.

TOM BARRETT:

Yeah. Thanks, Sam. In fact, the way the original recommendation is written, this issue was supposed to have been decided long ago during some sort of public outreach activity. And so to the extent people feel like it has it say it's still going to continue to be a matter of debate. Even if we choose three, it sounds like it would be a debatable issue for the OEC to conduct. But you're saying, it sounds like the less controversial one, in your mind, is to go with three rather than have an aspirational goal of eight.

SAM EISNER:

That's my sense. Yes. Because I think that from the Board side, when they accepted the Independent Examiner report, the initial implementation plan, all roads were kind of leading to three, so people kind of knew what they were getting themselves into. So the more that this looks like it deviates from that, that there could be some concerns or there would be likely be more concerns raised.

TOM BARRETT:

I see. All right. Obviously, does anyone else want to comment on this particular topic?

CHERYL LANGDON-ORR:

Top of the hour. Sam's got to leave, Tom.

TOM BARRETT: All right. We'll leave it at that, guys. I guess we're done.

CHERYL LANGDON-ORR: Good call.

TOM BARRETT: With next week, our next meeting, guys, real quick.

EVIN ERDOGDU: Thanks so much, Sam and everyone. So yes, thank you, Yvette. Our next scheduled meeting is for the 21st and we will follow up with them in Legal's guidance regarding Rec 27, and of course, be updating you, Tom and Cheryl, in between. I'll also share an e-mail with action items and some summary from the conversations from this call.

TOM BARRETT: Awesome. I can see the light, guys. I can see the light.

CHERYL LANGDON-ORR: And it's not a train, thank heavens. Thanks, everybody.

VANDA SCARTEZINI: We hope.

CHERYL LANGDON-ORR: Oh, Vanda. Don't do that to me. Take care, everybody.

VANDA SCARTEZINI: Bye-bye. Bye-bye, everybody. Bye-bye.

[END OF TRANSCRIPTION]