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YVETTE GUIGNEAUX: Greetings, everyone. Welcome to the Nominating Committee Review Implementation Working Group Meeting #96 on May 26, 2022 at 19:00 UTC.

Attending today's meeting from the working group we have Tom, Arinola, Remmy, and Tracy. Attending from ICANN Org staff, we have Betsy, I have Evin, Jia, Sam, Teresa, and myself, Yvette Guigneaux.

We'd like to remind everybody today's call is being recorded so please state your name every time you take the floor for the record. And I'd also like to ask if anybody has any updates to their SOI? No? I think that about does it for me. I also have no apologies. So I think we kind of have a semi-full house today. I'll go ahead and get the agenda on screen. Tom, I will turn things over to you.

TOM BARRETT: Thank you, Yvette. Welcome, everyone. So hopefully, we're wrapping up the final few items here, Recommendation 27, the final report for the working group, and then the meeting cadence, if any, given ICANN74. Should we jump right into step two, Recommendation 27?

YVETTE GUIGNEAUX: Yeah, that works. I'll go ahead and get on screen, and then I can hand it over to Sam from there.

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*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.*

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SAM EISNER:

Hi, everyone. This is Sam Eisner from ICANN Legal. The last call I attended, one of the action items that we agreed on was to try to identify some language for a transition article to help move in the unaffiliated director consideration into the Bylaws. So I went through and I started with what I believe to be the most recent updates to the Bylaws that had been identified through that Review Implementation Working Group. And working off of that redline, I made some additional changes.

One of the things, if you recall in the earlier version, the way that the Review Implementation Working Group had previously proposed to work in the unaffiliated directors was actually in a modification to the role of the NomCom. But when you step back and look at it, you want to make sure that you have requirements to serve on the Board specified within the Board, and so that we can tether it into the Board qualification.

So you'll see here that there's an addition of some work for Article 7, which is where we define the board of directors. Yvette, if you can scroll down to the next page. Stop. One of the things that I propose to put in was that there are obligations you looked at the Board as a whole to have unaffiliated directors. This is the first place that that concept would appear in the Bylaws, and then there would be a reference back to the Nominating Committee Operating Procedures, and then also identifying here that this will be subject to the transition article because you don't want to have the requirements to serve as director housed in a different place from the directors themselves. So I recommended that we build this in here.

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Then if you keep going, we come to the next point. Stop here. So this is in the section of Additional Qualifications for Directors. So this is where we have things like the preclusion of current NomCom members from sitting on the Board. We also built in during the transition exclusion from people who aren't on the Empowered Community administration, but it also has you can't be on the leadership of an SO or AC and on the Board at the same time. Here, this is another place where we would call out as an additional qualification that there should be at least three directors nominated by the Nominating Committee to qualify as unaffiliated directors, again, referring back to the NomCom Operating Procedures where that will be housed, specifying here that any change to that definition would require public comment, ICANN Board approval. That's something we talked about with the statement itself. Then making clear that acceptance of compensation for service as an ICANN Board director does not disqualify any candidate from meeting definition of unaffiliated. So before we move on to the other places where I made some changes, Vanda, I see your hand is up.

VANDA SCARTEZINI:

Thank you. Thank you, Sam. Just for clarifying, if it's clear for everybody. When inside NomCom, you should choose what? For instance, you have three positions, you should choose what? So those three should be from the past ones, for instance, the amount of the Board is those sitting there plus the next one. If they have three unaffiliated directors, so the NomCom has no obligation for that?

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SAM EISNER:

Yes. That's actually the issue that we have to address in the transition article. So hold that thought because that's exactly one of the things that we'd like to talk about today. This is where I'd like to get some direction from the NomCom. I think you'll see there's kind of a bunch of brackets when we get to the transition article because I wanted to get some direction from this team.

So if you can scroll down a little bit more, those are the only two changes we proposed to—stop here for a second. So those are the only two changes that identified for Section 7 in order to integrate that concept of unaffiliated directors into the Bylaws. Then we have in the earlier version that the NomCom Review Implementation Working Group had proposed for the Bylaws changes, there was this line here—and I know it's difficult to see—but you can see it's a Samantha Eisner deletion. It's proposing to delete the description of the NomCom would no longer include the proposed addition of, "In addition to that skills and attributes listed for all ICANN Board directors in Article 7, the NomCom shall ensure the nomination of unaffiliated Board members." What we've put in place above kind of clarifies that that's part of the role of the NomCom and it didn't have to be baked into the description of the NomCom itself. So I do propose modifying this group's previous Bylaws amendments in that way. Now, I think that this is the only place that we really had identified unaffiliated directors in the Bylaws as earlier presented.

So then we can move down to the very end. So that's about the NomCom itself. Yeah, go up a little bit. Perfect. Okay. On the previous page was the transition article for the transition to the new Nominating Committee taking into account the changes that will be enforced after

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the NomCom. So that was how do we transition the terms of the existing Nominating Committee, etc.

Now here from my read on it, I'd recommend that we have a separate transition article about transitioning to unaffiliated director appointments because they're really two separate concepts. The transition article before is about the NomCom itself and this is about the director. So that's why it's set out as a separate proposed section. This would be directors and their selection incorporating unaffiliated directors.

So this is a proposal that I started off with. Just to read it out. To effectuate the introduction of unaffiliated directors as specified in Section 7 above with the Bylaws as adopted on—so we'll put in the effective date—the Nominating Committee shall apply the following. First, this would be for each year out of a three-year appointment cycle. So that's the reference to 2020x, x + 1, x + 2. Whichever selection here goes into effect for that the Nominating Committee has an obligation to appoint one unaffiliated director at each one of those cycles. The Nominating Committee has the discretion—Yvette, at this point, you can probably expand this. We don't need to see the comments on the side to make it easier for people in the room to see. If you can go back down. Okay. Let's go to the next page now. There. That probably makes it easier for everyone. That's perfect.

There's also a clarification that the Nominating Committee in its discretion has the ability to nominate additional unaffiliated directors within each of these cycles. So this is also part of the conversation that we had last time I was here about building in that there's a requirement

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for three but there's discretion to go above. So then, once you get into that fourth year of this election cycles, that's  $x + 3$ , that's when the Nominating Committee then has the opportunity to step back and look at the composition of the Board as a whole, as it will be for the next term and say, "Will there be three unaffiliated directors on it?" So there's not a continuing requirement to select an unaffiliated director if there are already will be three on the Board for the next one. This is when it just becomes part of the NomCom's assessments and application that you won't any longer have a requirement to have one per cycle so long as you will have three. This is just a proposal. This is an idea of how this could go into effect.

Then this is where things get dicey. This is where I'm really looking for some direction, of course, any inputs you have on the earlier proposal I'd be interested in. But this is really where the issue comes in. For directors who are serving on the ICANN Board prior to the Bylaws going into effect and who are seeking a consecutive term on the Board, this is where we have to identify, will they be eligible to qualify as unaffiliated or won't they?

If you recall, as we talked about unaffiliated directors, if we think about it in the purest sense, we don't look at who is actually in those seats. What was decided was on a going forward basis, if someone is on ICANN Board but they're not selected as unaffiliated, unless they step off the Board for two years, they won't be able to qualify as unaffiliated. So they can't just go from a regular appointment to an unaffiliated appointment without some time off the Board. So someone couldn't have come in as an SO and AC appointee, and then within the first couple months of their service, lost any or changed their employment

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and had changed the circumstance, so then be able to qualify unaffiliated for the next one. So we've covered that within the definitions. But how do we want to cover that for the existing board directors?

So here's where we hit that tension, which is, of course, there's the benefit of stability, and there's the benefit of retaining institutional knowledge, and there's the benefit of having directors who serve more than one term. That tends to be a good thing for the organization to make sure that there's some consistency among Board members. That being said, no single Board member is ever guaranteed subsequent selection to a new term. So with that, we have to have a line of building the rule in a way that makes sense without really taking into consideration that the personalities of the Board members or who we might be impacting. Because as the Board looks at it, we will see that there will be Board members who will be recusing themselves from this conversation because they understand they could be impacted from it. So just as they're taking themselves out, we have to make sure we're taking out the personalities as we think about this.

I wasn't really sure where to go with this. So I have a couple of recommendations or a couple of ideas of how you could go forward. So you could make a bright line rule that every board director who's currently seated shall not be eligible to qualify as an unaffiliated director for that term, if they couldn't have qualified for unaffiliated directorship at the time of their initial nomination to the Board and maintain that. So you could build in a path that a director could demonstrate that at the time of their initial selection to the Board, they would have met the qualifications anyway. So you could use that as a

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basis or you could come up with a different rule, but I wasn't sure really where to go with this and where the group would be most interested. I did go through and do some counts. Looking at the current composition of NomCom appointees, and if we presuppose that every currently seated NomCom appointee intends to seek reelection and the NomCom chose to re-nominate the same directors, we would see that in both 2023 and 2024 that all NomCom-appointed directors are eligible to serve at least one more term on the Board. So what that means is that we could face a situation where we might have to, without making any evaluation as to whether or not they could meet that, I would have met unaffiliated at the time. But there could be a situation where this would directly impact a current seated Board member's ability to be reelected because all open seats could be reelected with the same Board members.

So that's a long-winded explanation. I know it's a little bit roundabout, but this is really where I need some NomCom, where your team guidance is, what do you want this to say? Or do you want us to propose a couple of potential choices of this even to the OEC for that discussion? Or should public comment include a couple of proposals for the community to work through so that we can really have a meaningful transition clause that the community supports? With that, I will turn it back to you, Tom.

TOM BARRETT:

Thanks, Sam. That's a great question. I'll open it up to the members. Anyone want to raise their hand? Can we get Vanda?



VANDA SCARTEZINI:

Yeah. Still I have the same worry about how just focus on what we are seeing around in the Nominating Committee for the previous couple of years that I'm in is a combination of the needs to seek the best candidates, to receive proposal for unaffiliated, and to address the requirements that the Board itself sends to us. So that is not an easy task. If we come out with the opportunity that shows up like we need to identify three unaffiliated directors. I've seen what I have seen in NomCom for many times I've been there probably will never be able to do that. First, because normally good Board members that could be reapplying deserves the opportunity and maybe it's not fair to have opportunity in the previous or the next, not in that year. The second that the applications from outsiders are reducing with the time. So it will be certainly very, very difficult to have selected three unaffiliated good directors. Certainly that is an affiliate but those do not fit into the Board position.

So it's something that we need to think really much more about. I made the first question just because I'm seeing what is happening inside NomCom and I was the chair of the Outreach Committee those three years, and it was harder and harder to bring people to that position from the outside, really. You have some good ones, but if it is necessary you selected three, those three positions you have to fill in, selected three unaffiliated will be impossible, in my opinion. Thank you.

TOM BARRETT:

Thank you, Vanda. Anyone else? Cheryl?

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CHERYL LANGDON-ORR: If I could get the mute off. Thanks, Tom. Vanda, you make a really important point about it. I guess while I was listening to that point about the currency of the “attractiveness” for a really broad selection being brought in to Nominating Committee potential selection is an issue. I think to some extent that may have—not to some extent. It has definitely tempered my initial reaction to these alternatives. My initial reaction to the alternatives—I know Sam’s not going to be terribly surprised, I’d rather like the bright line version. There you go. You’re doing a transition at Legal. Do a [inaudible] line version and they will get to live with it and complain about it. But listening to what Vanda just said made me think a little bit more fondly on the “put two alternatives to public comment” approach. It doesn’t fix the issue that Vanda is outlining. But what it does is it almost helps us with community discuss some of these other areas. So I guess the community could be more prepared for that. And to be honest, as a transition article, it is only still a short-term issue. It’s not as if the long-term setting up and as things change, we might be more attractive to genuinely [inaudible] unaffiliated individuals from outside. But by the time that happens, we’re also got through this perhaps two years away from an existing if certain circumstances have changed and someone now could qualify as unaffiliated from “within the puddle”. Sorry about the struggle here, but I’m also listening to other people in my other ear. Anyway, that’s my reactions. Thanks.

TOM BARRETT: Thanks, Cheryl. Anyone else want to comment? Sam?

SAM EISNER:

One thing that I should point out is that one of the impacts of making changes to Section 7 of the Bylaws is that it makes this a fundamental Bylaws change. This group had not previously recommended changes to any of the fundamental Bylaws portions. So in some ways, it really does necessitate that community conversation and the impact of it being a fundamental Bylaws change means that the ICANN community through the Empowered Community process has an obligation for affirmatively approving not just a rejection but affirmatively approving after a community forum on it, and so there will be conversation. I think that whether it's about the transition article or not, because I think the transition article is an important part of that discussion, but this really does bring to the forefront for the ICANN community if this is the path of updating the Bylaws. I think that this is an important governance conversation and I wouldn't recommend that we do something to avoid the fundamental Bylaws process by trying to put the items in a place where maybe they don't belong in the Bylaws. To really bring out some of the conversation that Vanda was suggesting is, are we capable as a community to continuing to find a consistent stream of unaffiliated directors? Are we capable of meeting this? So this group has done everything you can do to recommend how that recommendation from the Independent Examiner could be implemented, but then there's that step of the ICANN community consenting that it too agrees that it can and should be implemented. So I wanted to find that because I think that idea of doing things to tee up the community conversation around it might actually be beneficial to supporting a good community forum on this as well.

TOM BARRETT:

Thanks, Sam. I'll put in my two cents as well. I think those are fair points. It'd be great for community discussion. Because of that, I'd like to eliminate any friction that might be caused by existing directors. So I would certainly favor recognizing the unaffiliated status of existing directors so they could satisfy this requirement if they decided to reapply. That, to me, kind of eliminates the concern people have about disrupting the continuity of the Board. We want to ease this in. That's why it's called a transition. So certainly, we don't want to force out a Board member simply to satisfy this requirement. So certainly, I would favor language saying that if a reapplying Board member would have been deemed unaffiliated, then they are deemed unaffiliated when they reapply, and thereby satisfy this requirement. And then we get the discussion about the challenge of finding these people kind of separated out from our proposed Bylaw change. Any thoughts on that? Anyone else want to comment?

VANDA SCARTEZINI:

Yeah. I believe, Tom, that this may solve the questions that does not solve the question that—well, maybe solve. Sorry. I'm thinking out of my mind. I believe that this will solve the question that when NomCom we will be obligated to select the three unaffiliated members. Because the unaffiliated member was an incumbent and still was incumbent, so it's a qualifier and make it easier. But yeah, I believe that may be the only solution that I can see in that situation that we haven't talked about. Okay. Yeah, I believe I agree with you, Tom.

TOM BARRETT: Thanks, Vanda. All right, any other? That's the answer to one of your questions, Sam, about I guess it would be item D. We were saying they shall be eligible.

SAM EISNER: Great. So I'll put that in. I'll take out the Alternative section unless you want to include that for any purpose for public comment. But what I'm hearing, really, is let's move forward with a presentation of ability to retroactively qualify for what we're posting. Then one of the things that we can do is really kind of coordinate around that public comment posting and make sure that if we have ask some questions or something, we can build out some of the concerns there and don't build it out just through presenting alternatives.

TOM BARRETT: Great. I assume there may already be in the implementation steps. This now means, for example, when people apply or reapply, there needs to be a checkbox where they self-declare they're unaffiliated. It's going to be built into the application process.

SAM EISNER: Yes. We'd have to work with the NomCom Support Team to make sure we have the right documentation to support this getting in. That then becomes an implementation item for the NomCom team as they roll forward.

TOM BARRETT: Right. Also, presumably, as part of the presentation of this, we should also present the definition of unaffiliated director as it would be in the Operating Procedures.

SAM EISNER: Yes. The two have to be presented hand in hand so people know what they're approving.

TOM BARRETT: Great. Any other areas you want some feedback, Sam?

SAM EISNER: I think that's it. I recognize that this is intended to be the last meeting of this group. I think I've gotten some pretty clear direction on this. I think we can refine this a bit on list. I understand if you want to be able to see the language kind of in full before it goes, including the updates to the Section 7, because we ran through this pretty quickly. But I don't see a need to come back face to face with this group, particularly since you don't have meetings scheduled, and I think we can coordinate on list if you want. But if you need anything else, just reach out, let me know.

TOM BARRETT: Great. Fantastic. Thanks, Sam. Should we go on to the next agenda item, Evin?

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YVETTE GUIGNEAUX: Let me just pop that back up.

EVIN ERDOGDU: Sounds good. Thank you so much, Sam, for that presentation. So the other item is the draft NomComRIWG final report. This was distributed in advance. We have a link in our external team drive for comment as a work in progress. We'd also be refining this with you, Tom and Cheryl and the working group here, before we submit it to the OEC. So maybe we could just display that document, Yvette, and I could just provide a broad overview of the updates. Thank you so much. Is it possible to kind of like shift it over so that the left side toolbar isn't showing? Yeah, there we go. Okay. Thank you so much.

So this is working off of the last Progress and Implementation Status Report which was submitted in December 2021, the fourth report. This would be the final report, which is the fifth one. So maybe you could just kind of scroll down a bit, Yvette. Thank you so much. I'll maybe tell you where to stop. So essentially, there were two major updates pertaining to Recommendation 24, the NomCom Standing Committee Charter, finalization of that, which would be presented in the public comment proceeding package, as well as what we have been just kind of discussing with Sam, the Recommendation 27 on unaffiliated directors. Most of these comments here outside of that are just formatting and any general updates to this report, which is about 28 or 29 pages. Sorry. Actually, you could scroll up a bit, Yvette. I wish I had the exact page but Tom made just one comment regarding Recommendation 24. Thank you, Sam. I see your comment. Thank you so much. It's maybe page four or something like this, I think.

YVETTE GUIGNEAUX: Okay. Keep going up?

EVIN ERDOGDU: Yeah. Sorry. It should be above this chart.

YVETTE GUIGNEAUX: Around here?

EVIN ERDOGDU: Yes. There we go. I believe so. So basically, it's summarizing how the group had finalized with OEC feedback, the Standing Committee Charter for the NomCom. Next steps for that. And then also we will be updating based on a conversation today with Sam on Recommendation 27. So this report would essentially say that the work of this working group is complete and the next steps would be submitting the package of the four Bylaws change amendments for Recommendations 7, 9, 24, and 27.

TOM BARRETT: Evin, I don't know if we can see my comments on the screen. I don't know if you're looking at something different. That's just a grammatical one. I actually thought there was a full sentence somewhere. It was part of the charter discussion.

EVIN ERDOGDU: There we go. Right there. I think so, yeah.

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TOM BARRETT:                    There you go.

EVIN ERDOGDU:                Perfect. Yeah. Thank you, Yvette. Sorry. I've been in your shoes. I hope that wasn't annoying.

So that was just a broad overview of how we're updating this report. Tom, I guess I can turn it over to you to address this section.

TOM BARRETT:                Sure. Overall, I thought the report looked great. Obviously, I'd love to see it with all the changes accepted so we can get rid of all the strikeouts and so forth. I just wanted to make sure we noted that if you go back to the charter, the charter itself has a preamble that references some implementation steps that were deferred for until a work plan of the Standing Committee was developed. So in a way, the charter is incomplete in the sense that we've deferred some certain roles of the Standing Committee until we build a work plan. So I just wanted to capture that because if you read through all 27 pages of this final report, a lot of them say their SC roles remaining. If you read through those SC roles, some of them are not yet in the charter. So I just want to tie it back to the fact that we've deferred some items to be addressed later in the work plan. Does that make sense?

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EVIN ERDOGDU: Thank you, Tom. Yes. I believe some of this language had been in the draft charter as well. Is that correct?

TOM BARRETT: Well, there's a preamble in the charter that discusses this without going into any detail.

EVIN ERDOGDU: Okay. Great. Thank you, Tom. So yes, I can accept the suggested edits here. Does anyone have any feedback or comments on this document? Maybe I can share the link in the chat as well.

TOM BARRETT: I think it looks good. Do we publish the charter as well or do we make that a separate process as part of the OEC's handling of the Bylaws?

EVIN ERDOGDU: In terms of this report, I think we could link to the final version of the draft final charter, and then the public comment proceeding, which would likely launch in August. That would be included in the public comment proceeding for any final comment there.

TOM BARRETT: Just for completeness—we have a definition of unaffiliated that we're going to put on the Operating Procedures. Is that also in the recommendation here? Do we include that definition as part of this final report?

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EVIN ERDOGDU: I think we do. Let me see. I would work with Sam on that, and we would want to keep the format consistent here.

TOM BARRETT: It might be under 27.

EVIN ERDOGDU: Yes, under 27. If you would like maybe, in terms of a process to approach this, I can accept these comments and distribute on the list and work with Sam about tweaking Recommendation 27 for the final report before we would of course share it with the OEC for the next.

TOM BARRETT: Yes, sounds good.

EVIN ERDOGDU: Great. Okay. Thank you. Thank you, Cheryl, for your comments. Any other feedback here? No? Okay. We'll be following up on that and circulating it before moving to final steps of submission. Thank you all so much. It's another milestone progress for this group. Woo-hoo. Great. So then the next item, I'll just turn it over to you, Tom, or if you'd like to go through next steps.

TOM BARRETT: Well, this is it, right? We're done in terms of the meetings?

EVIN ERDOGDU: Yes. So as noted, we'll have the context of ICANN74, we'll have the public comment meeting. But we'll be keeping the group apprised of these updates and any feedback we're getting. But yeah, this is a really big, significant milestone, the culmination of years of your work. So thank you, and Cheryl, and everyone here so much. So this is great. Looking forward to next steps here.

TOM BARRETT: Great job, everyone. It has been a long process. But I think it's a great piece of work. I definitely think this improves the Board and the NomCom. Hopefully, the next step will be exciting to see the Standing Committee stood up and get underway. So if you need us to get back together, just shoot out an e-mail and we can do that.

EVIN ERDOGDU: Perfect. That sounds like a plan. And also, you mentioned a potential maybe Prep Week webinar for ICANN75. So we can be planning those things, too.

TOM BARRETT: Yeah, absolutely. Feel free to call on us to help out with that.

EVIN ERDOGDU: Yes. Actually, to that end, I see a question in the chat from Tracy. There's not a Prep Week webinar for this ICANN74 meeting, but we're

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discussing now that we're concluding the work, the group will have a significant update for the 75 meeting, hopefully.

TOM BARRETT: Do we want to do some sort of ICANN blog post to announce this? Or how would you suggest we publicize to close the—

EVIN ERDOGDU: That's a great idea. Yeah, let me make that note. I can follow up and see as we get all the resources and documentation squared away, also announcing that, and maybe drawing attention to the public comment proceeding for instance.

TOM BARRETT: That'd be great. Fantastic.

EVIN ERDOGDU: All right. Great. Well, thank you all very much.

VANDA SCARTEZINI: Thank you.

CHERYL LANGDON-ORR: Tom, seeing as a couple of us were going to be in the Netherlands, I'd like to suggest if we can find time to perhaps gather in a bar somewhere, at least raise a glass to those of us absent and present, it

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would be well worthwhile—we could perhaps Skype in those or Zoom in those who aren't—because of that milestone.

TOM BARRETT: That'd be a great idea.

VANDA SCARTEZINI: Good idea. I have NomCom work the full day but—

CHERYL LANGDON-ORR: They'll let you out occasionally. You're allowed out late at night. We will get you before midnight.

VANDA SCARTEZINI: Okay. Bye-bye.

EVIN ERDOGDU: Have safe travels, too.

VANDA SCARTEZINI: Yeah. You, too. Okay. Thank you.

TOM BARRETT: Great job, everyone. Yvette, Evin, and everyone, Teresa. Thank you for all your support as well. This could not have happened without you. So I really appreciate all the ICANN staff getting us through this.

VANDA SCARTEZINI: Thank you. Thank you, Yvette. And Sam did a really good job for us.

TOM BARRETT: Can I hear a motion to adjourn?

UNIDENTIFIED FEMALE: Hell yeah.

EVIN ERDOGDU: See you all.

TOM BARRETT: Bye, everybody. See you later.

UNIDENTIFIED FEMALE: Bye, guys.

TOM BARRETT: Bye.

**[END OF TRANSCRIPTION]**