ICANN
Transcription
GNSO Bylaws Implementation Drafting Team call
Wednesday 07 September 2016 at 13:00 UTC
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Attendees:
Farzaneh Badii
Steve Metalitz
Darcy Southwell
Amr Elsadr
David Maher
Edward Morris
Steve Debianco

Apologies:
None

ICANN staff:
Julie Hedlund
Marika Konings
Terri Agnew

Coordinator: The recordings have started.

Terri Agnew: Thank you. Good morning, good afternoon and good evening. Welcome to

                         the GNSO Bylaws Implementation Drafting Team call held on the 7th of

                         September, 2016.

On the call today we have Edward Morris, Steve Metalitz, Steve DelBianco, David Maher, Darcy Southwell, and Farzaneh Badii. I have no listed apologies for today's meeting.

From staff we have Julie Hedlund, Marika Konings, and myself, Terri Agnew. I would like to remind all participants to please state your name before speaking for transcription purposes. With that I'll turn it back over to Steve DelBianco. Please begin.

Steve DelBianco: Thanks, Terri. Thanks, Julie. Appreciate that. So we have thin attendance today. And the implications of that are a little concerning because we have so much work to do if were to meet the deadline Council set for us of coming up with at least a plan by the end of September.

On our last call, if we recap, we broadly discussed the idea of approaching this as trying to come up with solutions for how GNSO does nominations for the new empowered community and different elements like the PTI and CSC. And how does the GNSO make decisions about exercise of the new empowered community powers instructing our delegate or representative, for instance, or deciding whether to initiate a petition to block an ICANN budget or agreeing with a petition from another group that wants to, for instance, spill the Board.

All those yes no decisions have to be achieved by the GNSO in order for us to honor our obligations and opportunities under the new bylaws for the transition. So I had proposed that we attack the ideas of nominations as opposed to decisions, and try to come up with decisional thresholds for those two separate categories.

And if we did come up with methods of making those decisions, we would be able to apply those to that entire spreadsheet that staff prepared which is many, many pages indicating all the different places in the GNSO procedure

where we might have to update something to be able to take an action pursuant to the empowered community.

Another topic of discussion on our last call was whether this decision-making for nominations or for actions would occur within the GNSO at large, or would it occur within Council? I had asked staff to display, for your purposes, just a slide from ICANN's Website where GNSO's current – GNSO Council's structure is laid out. And I do want to talk about that with all of you today. Thank you. You can rotate it with the controls that each of you should have.

So at the beginning of our last call, I know David Maher, on behalf of the Registry Constituency, David you weighed in saying that your preference was to simply use the Council's de jure method of making decisions where Council says it has the majority of each house.

The discussion then went on to consider where that came from and was that – while that may be appropriate for policy level decisions, that are within the remit of GNSO Council, there are many decisions, well frankly all the decisions, that will be made under the empowered community and the bylaws or decisions not related to a PDP or a specific policy. Instead, they are about the generic TLD community weighing in on holding the corporation accountable and challenging its actions.

And so for that reason there's not an assumption this group shouldn't start with the assumption that the only way GNSO can speak is through Council and we shouldn't make the assumption that when Council does speak that it must only use the majority of each house rule since it's not a policy matter.

So this is my attempt to summarize where we finished the last call. And before we turn to the agenda for this call, I'll turn to the queue because I'm sure that you may have a different opinion about how I summarized the last call. David Maher, you're first. Can't hear you, David.

David Maher: this is David Maher. I think your summary is substantially accurate. But I'd just like to say that I think there's a large mistake in what you've said. The Council has published a chart that's called Annex A to the document that was circulated. And Annex A shows that there are voting matters beyond policy, for example, in selection of Board Directors of ICANN.

And I think it was – would be out of scope for this group to change the voting arrangements of the GNSO Council or to deprive the Council of its right to make decisions as required by the new bylaws. Thank you.

Steve DelBianco: David, I think that we did mention that on the last call. And I probably should have reiterated it in my summary of the last call. And you're right, over the past 10 years there have been instances where Council has voted on things other than policy and when it's done so it used the majority of each house rule. Steve Metalitz, who's also on the call, I remember him suggesting that when you really read what the bylaws say about GNSO Council, that it's supposed to handle the development of policy.

So Steve Metalitz made the point that when Council has acted on matters other than policy, it's acted outside of that the bylaws say it's supposed to do. So you're right, we've been doing it. And Steve's right, we're not really sure we're allowed to be doing it. Okay. Ed Morris, go ahead.

Ed Morris: Thanks, Steve. I agree with everybody. Personally, your summary was correct. Steve Metalitz is correct in that we're sort of out of scope and have been out of scope. And David's correct in that we've been doing it and maybe we should continue to do it going forward.

What I can do is fill you in a little bit about what we have talked about in Council in this regard. At the informal session, we have on Wednesday in Helsinki, James, Susan and myself started talking and speaking about trying to create a unified appointment structure for Council. We didn't talk about any

other sort of arrangement. We assumed that the appointments were going through Council.

And frankly, we hadn't even considered the fact that we were going to have a DT that was going to be dealing with these issues. So the one thing I want to throw out there right now, I do believe it would be the preference of Council based upon the conversations we had there to come up with a uniform appointment structure however we do it. We don't want to have as best we can avoid it, different appointment procedures for each and every appointment. We'd like to try to – and this would be my personal preference, to create one structure for all appointments.

Secondly, since I was appointed by an NCA, I do want to point out that once we leave the current structure, we have to deal with the question of what the role of the NCA are supposed to be in terms of appointments. I've done some research the past week, I'm – my inclination is they should be involved, that they were intended to be a full member in terms of setting policy at the GNSO but I'm hoping to hear other perspectives from folks on the DT. Thanks.

Steve DelBianco: Ed, let's make sure the notes reflect – and this is where I need staff to help is that the key point that Ed Morris made is this unified appointment structure was – the word "unified" there would mean for all appointments, not just those related to the transition and transition bylaws. And so I have that right, Ed.

Ed Morris: Correct, Steve.

Steve DelBianco: Got it. Because for review teams, let me give you an example, the Affirmation of Commitments Review teams is an area where Council itself has tried to pick nominees that it submits to the Chairman of ICANN's Board and the GAC. That's changed under the new bylaws. In the new bylaws, the Affirmation of Commitments is brought into the bylaws and the four review teams are actually designated where GNSO gets to nominate seven different

participants of which three will be selected by the chairs of all the ACs and SOs. It's no longer something that's up to the Board of ICANN.

So we have changed as part of the transitional bylaws. And that would mean that appointments to review teams are part of this topic since this topic regards our obligations under the new bylaws. There are other appointments, though, right, as you indicate. There are other appointments other than Affirmation of Commitments reviews, for which you're expressing a desire for a unified structure so that the voting rules we come up with for appointments would apply to all appointments that are made. And let's note that in there and happy to get reactions on that.

We have more in the queue. Steve Metalitz and then David Maher. And then we do want to turn to the document that Julie did for us right after our last call where we analyzed the new bylaws and the – how explicit it is about whether Council or GNSO is to make certain decisions. So I would ask staff to get Julie's document ready to put up as a PDF when we turn to that. But next let's go to Steve Metalitz.

Steve Metalitz: Yes, thank you, Steve. A couple of reactions to what – to the two previous interventions. First, I disagree with some of what David Maher said, it is out of scope for us to change the voting rules for GNSO Council because I think we're just here to develop an implementation plan. So – but it would not be out of scope if – for us to recommend some changes there.

And secondly, and perhaps more importantly, I don't think there's any effort in this group to divest the GNSO Council of any decisions over which it has the constitutional authority under the bylaws. We're talking about the areas in which something is committed to the GNSO under the bylaws, particularly under the revised bylaws, and it's unclear whether – it's not stated whether the GNSO Council is the one to exercise that or should it be exercised in some other way.

So it's not – we're not taking anybody's authority away; we're trying to decide where to – or come up with a plan for allocating authority that is not clearly allocated in the bylaws.

Second, on Ed's comment, I think in theory a unified appointment structure certainly makes a lot of sense. But we have to recognize that especially if you're looking at the full range of appointments that the – that might come before the GNSO I think there's a big difference between, say, appointing someone to be the liaison to the GAC, which is an important role, but is a liaison role only versus appointing someone to represent the GNSO on – as part of the empowered community executive, or I think that's what it's called.

In other words, to be making decisions kind of life or death decisions about ICANN. So I'm not sure that, you know, it might be appropriate for one of them to be appointed by a simple majority of whoever makes the appointment whereas the other one you might definitely want something, you know, a much higher threshold because it's a much more, if you will, consequential role.

So I'm certainly open to the idea of recommending that there be a unified structure but I think there are some difficulties with doing that. Thank you.

Steve DelBianco: Steve, before I go on to David, I want the notes to reflect a little bit more accurately that if we address our charter and came up with decision making methods for the new obligations of Council, those do not change the way Council operates on policy matters. They could be completely constrained to only address new decision making obligations and opportunities.

Ed Morris, on the other hand, agreed with that but extended the question, extended the question to ask if we came up with a new method for appointments to things like the PTI, the CSC, and the empowered community, Ed Morris suggested perhaps we extend the same decision making methods to other appointments that are not part of the new bylaws.

If we advised – if we took Ed's route I guess that would be changing the annex that David Maher spoke of where appointments have been made in the last several years where Council itself used the majority of each house as the voting method. So, Steve Metalitz, I guess it depends. If we followed Ed Morris's track, we might be changing the way Council operates. If we only constrained ourselves to appointments under the new bylaws and decisions under the new bylaws, then that wouldn't make a change and you're exactly right, that would make no change to Council rules at all.

And it's not necessarily in our scope to make any change to the GNSO's bylaws description of its scope, I don't think we necessarily were going to step up to that. We thought that our role was to address how the – how GNSO itself, whether through Council or not through Council, would respond to the challenges and opportunities of the new bylaws. And with that, David Maher.

David Maher: This is David Maher. I agree that a unified approach is correct but I don't agree that Council in the past has been limited to voting in the Annex A structure strictly policy matters. There have been appointments and that's spelled out in Annex A. And I think it's – I can't see any was to support a change from the current voting structure of the Council and the empowerment of the Council to make appointments. Thank you.

Steve DelBianco: David, just to clarify, we all agreed that the current situation is the Council has been making appointments and that we all agreed that is outside of the strictly policy related functions that are delineated in the bylaws for Council. We agreed on both of those points. And if in fact we followed our drafting team's instructions, and came up with a method for GNSO to say designate a person to be our representative on the empowered community, that is within our charter to dictate a rule for how GNSO or Council makes that decision.

So I would ask you, before you give up the mic, wouldn't you acknowledge that it's within our scope to make a recommendation for how GNSO appoints the member for GNSO on the empowered community?

David Maher: Well I don't agree with that. I don't think it's within our scope to change the voting structure.

Steve DelBianco: Okay so just to be clear, we're making no recommendation and nobody on this call has said change the voting structure. We said that for new decisions our role is to come up with a way that GNSO makes those new decisions. So that doesn't make a change to the existing…

((Crosstalk))

David Maher: That's not what I'm saying. What I'm saying is that for the new decisions, it is outside our scope to change the voting structure.

Steve DelBianco: Could you clarify on that so do you think our work is done in the sense that the majority of each house, which is the de jure rule on Council today, has to be the only way that GNSO can speak to its new obligations under the new bylaws?

David Maher: That's correct.

Steve DelBianco: Okay. So you would say that this group doesn't have a role to exist; that we don't need to exist because it's already solved?

David Maher: Well we do need to exist. We need to treat the appointment questions but I think the recommendations that we make it's not necessarily majority of each house because in some cases the super majority is required or different voting structures are required if you look at Annex A.

Steve DelBianco: Yes, that – I can see now that we are actually not even having the same conversation. So the empowered community and the new bylaws would say that a decision could come up one day when GNSO, not Council, the GNSO is asked, "Do you support ALAC's petition to move forward on an empowered community role of blocking an ICANN budget?" That's a yes no decision presented to GNSO, not necessarily just to Council. And when that decision is presented to GNSO, that's not going to fall into the current GNSO procedures as a policy matter. So there is no…

((Crosstalk))

Steve DelBianco: …super majority. There is no super majority. So under David Maher's prescription, everything in the empowered community and in the bylaws falls to the majority of each those. Do I have that right?

David Maher: Well either majority or a super majority or some other…

Steve DelBianco: But, David – but David, how could it ever be super majority or something else, because under the current GNSO procedures, there is no anticipation of things like the empowered community. And so only PDPs and policy related matters go to the super majority level. And we're speaking of new decisions that have nothing to do with PDP. So where would this super majority still come in?

David Maher: That's an option that we could recommend. But it…

((Crosstalk))

Steve DelBianco: But, David, if we recommended that option we would be changing the GNSO procedures to say that something…

David Maher: …not necessarily.

Steve DelBianco: …other than the majority of each house. Really?

David Maher: No, I don't agree with that.

Steve DelBianco: Well currently in GNSO procedures the super majority is reserved for explicitly delineated PDP initiation and issues and PDP approval. Nothing in there would cover the decision on whether the empowered community should honor a petition to block an ICANN budget. So super majority would not apply, it would fall to the majority of each house.

David Maher: I would ask Julie to post Annex A to show you the different voting structures that still preserve the house voting procedures but provide for different voting levels for different matters. And then I think then we could do it within our scope.

Steve DelBianco: We agree that they're different but I think several of us have said that deciding on whether the empowered community, whether the GNSO rep on the empowered community would decide to honor a petition isn't covered by any of the bylaws or procedures today and therefore it falls to the majority of each house. I think you'd agree with that.

David Maher: No. I'm saying if you look at Annex A you'll see that there are different levels of voting.

Steve DelBianco: Okay, we agree that there are different levels but each of those different levels, David, are reserved for policy development and issue report initiation…

David Maher: No that's not true…

((Crosstalk))

Steve DelBianco: There is nothing. Okay, let's bring that up. Can staff help us by – actually what staff is recommending – Monica just put it – Marika just put it into the list. Would you please click – all of you who can – on the new governance bylaws which is supposed to describe the voting thresholds that David is speaking of.

Okay so I clicked on that link, Marika, trying to find out where it is.

David Maher: That's Annex A to the document that Julie posted yesterday or the day before.

Steve DelBianco: Yes, so David I have it. It's in Section 9. And anybody who clicked on it would see that it is all about initiating PDPs, modification of a PDP, PDP charter.

((Crosstalk))

David Maher: I don't think you're looking at…

((Crosstalk))

Steve DelBianco: I'm looking at the bylaws, not your annex, I'm looking at the actual bylaws which is what matters. And the GNSO super majority has only to do – looks to me…

David Maher: Oh.

Steve DelBianco: …with PDPs. Now there might be some possibility of what's called a GNSO guidance process, a GNSO guidance process. What do – does anybody on this call know about a initiation of a GNSO guidance process? I'll paste it into the chat just for purposes of help. Yes, exactly Marika. So I just pasted it into the chat what – Marika, if you can please speak freely what – are you aware of instances where we've used the GNSO guidance process before?

Marika Konings: Yes, this is Marika. That is actually a relatively new process that was developed by the Policy and Implementation Working Group to provide some additional options for the GNSO Council to deal with certain – mostly policy questions without having necessarily to go into a PDP. And I think here it would be specifically thinking of issues where the Board would, for example, ask for guidance on certain questions that are not necessarily covered by policy or may have been subject by a policy development process but the guidance that the Board might be looking for may seem, you know, too insignificant to go through a whole policy development process.

So the idea was that that could be the kind of process that is a formal process but indeed as you said, has also the super majority vote associated with it to make sure that it has a certain level or weight before it gets adopted. But the process actually hasn't been used yet but as said, it's relatively new so I don't think really there has been an opportunity where the GNSO Council or the GNSO as a community felt the need to invoke that procedure.

Steve DelBianco: I see a couple of hands in the queue. So we are having multiple conversations here because we are trying to look at what the bylaws say about non-PDP decisions. And we are also trying to be conscious of what David Maher and Annex A have in it. So I'm going to try to retrieve Annex A from Julie Hedlund's last email to make sure that I have that in front of me. And let's turn to Steve Metalitz.

David Maher: It's not in the last email.

Steve DelBianco: Annex A, so I'm going to ask staff – thanks for that clarification, David. There were five attachments on Julie Hedlund's last email. So Julie, question for you, did any of those include Annex – what David is calling Annex? And if not, David, could you quickly give it to staff in a PDF format so that we can put it up on the screen? Julie is handling it now. So thank you, Julie. Julie is going to put Annex A up, David, but meanwhile I'll move to Steve Metalitz until we can display it. Go ahead, Steve.

Steve Metalitz: Yes, thanks. This is Steve Metalitz. I am a little surprised we're having this conversation too, but it seems clear that, you know, that in the bylaws, as they currently stand, and I would wager in Annex A, A1 and A2, there are a list of types of votes and what the appropriate threshold is. This is the status quo. And all of – and the question is, if you had one of the new powers of the GNSO under the bylaws – the new bylaws – do any of them fit – do they fit into any of these categories?

In the existing bylaws there are 18 categories. And I think it's also true with what was thrown up on the screen there. And, you know, they – about initiating policy development process, creating an issue report, terminated PDP, approve a PDP, etcetera, etcetera. All of these things have a – have a voting threshold requirement.

And then the provision that I put in the chat, which says, "Except as otherwise specified in these bylaws, Annex A, Annex A1, or Annex A2, or the GNSO Operating Procedures, the default threshold to pass a GNSO Council motion or other voting action requires a simple majority vote of each house."

So if I am correct that these new powers do not fall within any of the enumerated voting thresholds that are in the bylaws, and the annexes now, then if we maintain the status quo as David is advocating, then, you know, everything becomes a simple majority vote of each house. Everything ranging from, you know, nominating people to be on a review team, to appointing somebody to be a member of the empowered community executive team and kind of handle these life or death decisions for ICANN. So I think that's what David is advocating if I understand him correctly. Thanks.

Steve DelBianco: Yes, because Steve is right, the 18 decisions that are listed in the ICANN bylaws today of them the last four were added recently and have never been used and they talk about this GNSO guidance process. So those were written prior to the need for us to respond to decisions of the empowered community.

And it's not at all clear that they would apply. But it's possible that they could apply. And if they did apply, they do have – there's a decision making rule on initiation and approval in there that is different than a simple majority of each house.

And I think that this Annex A from David is about to be displayed by staff, I hope. And then we'll be able to speak to that. Amr, cochair Amr, would you please speak?

Amr Elsadr: Yes, thanks, Steve. This is Amr. Sorry. I think that echo may be my fault. Yes, okay it's gone. Yes, I wanted to make one clarification and this is according to my understanding of the discussion we're having now, but I also wanted to ask David a question, and I apologize, I did join the call a few minute late.

But I just wanted to make sure we're speaking – we're talking about the same thing. Are we talking because – are we talking about the voting thresholds here or are we talking about the structure? Because I appreciate that they're both interrelated…

((Crosstalk))

Steve DelBianco: …yes, we should never use the word "structure" in this conversation because our charter doesn't include anything to do with structure. We have to deal with…

((Crosstalk))

Steve DelBianco: …decision making methods and that includes voting so no structural changes.

Amr Elsadr: I agree, Steve. And I don't believe we're meant to provide any recommendations on structural changes. But when I heard the word "structure" being used in this context I assumed it meant not using Council to

make these votes and perhaps come up with another body that doesn't use the two house structure and the associated voting thresholds which the Council does ultimately use for all decision making. So this two-house structure does play an important role in how the different voting thresholds are set up.

But if we're only – if we're simply talking about thresholds, and using the example of the – of appointments that Council makes, the GNSO Council has made several appointments and used the simple majority rule of 51% to make these – as a voting threshold for these structures. My understanding is this is simply done because there's an absence of clear rule on what this – what the voting threshold should be.

We have voting thresholds that are clearly outlined for different types of motions including the launching a GNSO guidance process, which Marika shared, as well as the other ones in Section 9 in the bylaws such as – so we have different voting structures for initiating a PDP. There was a different voting threshold – sorry, not structure – a different voting threshold for adopting a charter, for adopting PDP recommendations.

There's a different voting threshold for adopting recommendations coming out of a non-PDP working group such as the Policy and Implementation Working Group that resulted in the new processes such as the GNSO guidance process, the expedited PDP process. Thera are a whole bunch of different thresholds that are listed in both the bylaws and the GNSO Operating Procedures.

But my understanding is that this group was meant to address specifically the new powers coming out of the Cross Community Working Group on Enhancing ICANN's Accountability, which means there are new issues and they may require us to be a bit creative when it comes to voting thresholds. But it becomes a little confusing when the word "structure" is used because then I'm not sure if we're talking about using voting thresholds in the

traditional Council sense across a few houses? Are we talking about something completely new?

So far personally, I'm in favor of continuing to use the Council as a voting body. I haven't heard any compelling arguments to suggest otherwise. So I will go ahead and keep working on the assumption that we are using the two house structure and we're trying to come up with thresholds. But I agree with Steve DelBianco when he says that, you know, we can – it's perfectly within this group's remit to come up with different thresholds based on what we see as appropriate to the new powers that the GNSO is being granted.

The GNSO – as Marika has pointed out, the GNSO is mandated in the bylaws to develop gTLD policy recommendations but I don't think the bylaws specifically state that the GNSO is not supposed to do anything else or the GNSO Council is not supposed to do anything else. The GNSO Council typically manage the policy development process because that was the mandate – the only mandate outlined for the GNSO and the bylaws. But now the GNSO is involved in so much more; the scope of its activities is going to increase. I think it makes sense for the Council's scope to also increase in that sense.

And I, again, I agree with Steve DelBianco's earlier comment that it is not beyond the scope of this group to come up with these new voting thresholds depending on how we see them fit appropriately with the new powers that we will be granted. And it might be helpful for us to also set one for appointments, because currently the Council doesn't have that at all. And the Council liaison to the GAC, for example, or the GNSO liaison to the GAC is – we've used a simple majority voting threshold on that issue.

But again, that's as far as I know, this is only because there's an absence of a clear voting threshold that we need to use for an appointment such as that. So it's just a matter of working out the details, that's the way I see it. And I don't think we should be, you know, stressing a lot on what is outside of the

scope of this group. I think the charter – well we don't have a charter actually but we do need to somehow help the Council and help the GNSO use the powers that have been granted to us in an effective, an efficient manner that doesn't really slow down the – doesn't hamper the work of the GNSO and allows us to participate fully as a separate organization. Thank you.

Steve DelBianco: Thanks, Amr. Appreciate that. And staff, let me thank you for putting up the GNSO procedures document that you did. And I want to echo that the – what is, 26 different items that are listed right there are exactly as they are in the ICANN bylaws. And they use the expression right at the top to say that the default threshold to pass a Council motion or other voting actions is the simple majority of each house.

And then then the 26 delineated items cover – well, many different things but nearly all of them are related to policy except for this new stuff at the end. And that new stuff, any of you can scroll down to the last four items in this list, they talk about a GGP, a GNSO Guidance Process, which we've never used. And it has a different rule. So it's possible that if we put the empowered community decisions in the hands of Council that Council might find itself in those last four items, a GNSO guidance process, in which case you have to initiate a guidance process with 1/3 of each house.

And I don't really think that works. Let me give an example. Let's suppose that the ALAC has petitioned the empowered to community to block an ICANN budget. The decision is presented to the GNSO. If the GNSO followed this GNSO guidance process well then, believe it or not, Council might well decide it's not even going to bother to weigh in because it takes an affirmative vote of more than 1/3 of each house to weigh in on whether or not to do an initiation of a guidance process.

And the approval is an affirmative vote of a GNSO super majority. So it's not at all clear that this was written in anticipation of responding to questions that come up from the empowered community. And that would mean then David

Maher and I guess to Amr's opinion the default threshold, as delineated in the bylaws, and our procedures, is a majority of each house.

But before I turn to you, David, I did want to remind everyone that the agenda for today's call does not presume the first question that we have to address is whether it is Council that must speak for GNSO, or can we consider direct decisions by GNSO's delineated member stakeholder groups and constituencies instead of Council? That is a question that was put to us. It's part of what we're supposed to consider.

If we decided that, nope, it's got to be Council, well then we get into the question of should we add to the bylaws and procedures specific information and voting thresholds, I didn't say structure, but voting thresholds with regard to empowered community decisions and empowered community appointments. And so that's the way we have to proceed.

We start with this question of is it Council or is it GNSO outside of Council? And if it is Council, what are the thresholds? If we decide that it's GNSO outside of Council, we have quite a bit of work to do to define how one ascertains the views, either majority or super majority of GNSO outside of asking its councilors. So that does apply to multiple steps here.

David Maher, go ahead.

David Maher: David Maher. I think we must decide that it's – that only the Council has the power to vote.

Steve DelBianco: Okay. So maybe consider it – this is a very lightly-attended call but I'll put you down, David, as believing it must be Council. And the question of should it – must it be Council or can it be some other body, it'd be good to understand what everyone here thinks.

((Crosstalk))

Steve DelBianco: But it can't be any more than a straw poll at this point because we don't have very good attendance. But, please, I would ask each of you to weigh in on that threshold question. Must it be Council or can it be the GNSO? And let me you each to address that as you speak. Go ahead, Darcy.

Darcy Southwell: Thanks, Steve. I guess at this point, because we're talking hypothetically, I'm not necessarily opposed to it not being the Council but my one concern is that these powers, you know, when you talk about the GNSO as a whole in its operations, these powers were not given such that the individual house or stakeholders within the GNSO can use those against each other.

And so one of my concerns is that when we talk about, well, it doesn't have to be the Council, is, you know, there's probably some times where that's fine. But other times where it's not. So talking at a theoretical level is a little bit harder than talking about actual decisions. But I just want to be careful, because I don't think we should give the power to stakeholder groups to use those powers against each other.

Steve DelBianco: Darcy, just to clarify, on the question of should it be Council? Would you answer be yes or no?

Darcy Southwell: I mean, if I have to pick yes or no I pick yes, it should be the Council.

Steve DelBianco: Okay so I have a yes from you and a yes from David. Let me go to Steve Metalitz then.

Steve Metalitz: This is Steve Metalitz. And if I have to give a yes or no answer, my answer is no but I'll try to clarify that a bit. We have a Council now that has been selected by the stakeholder groups, by the constituencies, to do certain tasks that are set out in the bylaws. And those are predominantly, but I will mention – I will agree not 100%, managing the policy development process. That's why we chose those councilors. That's why we instructed our councilors on

how to choose the leadership of the Council. That's, you know, what they were put there to do.

They were not put there to do these other – these other powers. I agree, it's a little more complicated. It's always easier to just follow inertia and say, well, we have this group set up and we can use it to do X and we can tell it to do Y, Z and W as well. But in fact I don't think it's that difficult to come up with an alternative. And I think that first slide that you put up there, Steve, provides the basic way forward because it lists the stakeholder groups and constituencies.

And those – the leaders of those groups have gotten together from time to time to – outside the Council to make statements, to come up with unified positions and those have been I think quite persuasive and important in various ICANN debates.

So the solution – the best solution, in my view, is to formalize that and figure out which of these – of these new powers should be exercised by such a group. So, again, I don't think -- you've asked for a binary answer here, I appreciate that so my answer is no, but that's kind of my thinking behind that. Thank you.

Steve DelBianco: Thank you, Steve. Appreciate that. And note to staff as I realize David Maher used the word "structure" a few times. But David agreed that that isn't really the word we're talking about. He revised that to use the word threshold so let's just say that so we don't get anybody wrapped around the axle that we're proposing a structural change to the GNSO Council, we are not. So thank you.

Let's go on to Ed Morris and then make sure that Amr, Farzi, make sure that you weigh in on this question as well. Go ahead, Ed.

Ed Morris: Hey, thanks Steve. The binary answer would be yes. I'd prefer it to be in Council. However, it doesn't have to be. I do agree with Steve Metalitz, it doesn't have to be. But I haven't heard a compelling argument to not use Council. It's simple. It's there. But also even if we were inventing this from scratch, it's a little bit more diverse. And if we go to another – I don't want to use the word "structure" – if we go to another system, we need to deal with the NCAs.

If we just were to go to the leaders of the SO/ACs, the NCAs are not involved in that. And so how do we deal with them? Or do we want to say the NCAs should not have a role in our new decision making process? And that's something I need to think a bit about. Thanks.

Steve DelBianco: Thank you, Ed. We recorded you as a yes in the should column. And I did want to mention something to you that the NCAs are part of Council, they are not part of GNSO. So they wouldn't have – they wouldn't have a role in the GNSO. But they do have a role in Council.

Ed Morris: And I was trying to figure out how we situate them with the new powers. It's not…

((Crosstalk))

Steve DelBianco: If Council – right, but if Council were making the decisions on the new powers, then NCAs, at least as currently in the bylaws, they do – two of them do have a vote.

Ed Morris: Right.

Steve DelBianco: But if we ended up putting these decisions in the hands of GNSO at large, NCAs would not have a role. Would you agree? At least…

((Crosstalk))

Ed Morris: Unless we figure out a way to give them a role. Should they – I guess I'm still
                     at the should or representing the will. Should they have a role in the new
                     decision making power? Is that part of their purpose of being here? I haven't
                     figured it out.

Steve DelBianco: Got it.

Ed Morris: It's a question I throw out.

Steve DelBianco: Excellent. And then I will note that Marika asked a question in the chat, a
                     question of Steve Metalitz that I hope Steve will respond to. It was this notion
                     of wouldn't directed voting achieve the same result with having to create a
                     new – and I can't believe she used the word "structure." It's possible, but
                     remember there is no directed voting in the Non Commercial Stakeholders
                     Group. Each of those six councilors vote however they like today, that's in
                     their policy and procedures. It's not something that the bylaws require.
                     There's nothing in there about requiring directed voting.

                     So, Marika, while Steve Metalitz may or may not feel satisfied with your
                     suggestion, I think you'd have to acknowledge it requires a change to force
                     that to happen. Yes, don't say "structure" anymore.

                     Okay, I did want to hear – Darcy, your hand is back up or is that an old hand?

Darcy Southwell: Sorry, that's an old hand.

Steve DelBianco: Thank you. Ed Morris, your hand is still up. And Amr.

Amr Elsadr: Thanks, Steve. This is Amr. I just wanted to echo Ed's earlier comments. I do
                     agree that it's a good idea that the GNSO Council should be the decision
                     making body for – on behalf of its community, on behalf of the community it

represents, which is the various GNSO stakeholder groups and constituencies.

But again, as like Ed said, I don't believe it must be that. But I do believe that one significant disadvantage of setting up a new body that may take on some of these roles is certainly adding another layer of administrative work that the GNSO is going to be required to do and then following a separate group I just think that's extra work that needs to be justified if we decide – I mean, if we do decide that this is necessary it has to be seriously justified.

I also have a concern on when some of these issues may interconnect with policy issues and how these policy decisions, for example, policy recommendations coming out of the GNSO, are handled by the ICANN Board. Then you're going to inevitably has is two different bodies – I'm trying to avoid using the "S" word here – having to coordinate and communicate in order for the same community, which is the GNSO, to come up with a position.

So you'll have two different bodies that represent the various GNSO groups. And they have to communicate together in order to come up with a position to address an issue that came up as an example, because of an action or inaction by the ICANN Board. So I just think it makes more sense for the Council to take this on. And we might want to think about other mechanisms to help them do this.

Right now, Council is already overloaded with a lot of work. There are constantly agenda items and Council meetings that are deferred sometimes beyond one meeting. We might want to consider different procedures for Council to do this work. For example, dedicated calls for issues pertaining to empowered community.

But I still don't see any justification yet to set up an additional body to do this work. But, again, if these justifications are provided and I do find them

compelling then I do agree that the GNSO Council – I mean, it's not a must that they have to do this but I believe they should at this point. Thank you.

Steve DelBianco: Thanks, Amr. Before I turn to Steve Metalitz, I ask you to consider that it isn't a body at all if you followed Steve Metalitz's preference for a non-Council method. If the ALAC had asked the empowered community, we'd like to block an ICANN bylaw as one of our powers. What say you, GNSO?

If that question were presented to the GNSO rep on the empowered community, and if we had written rules that say that the GNSO stakeholder groups and constituencies make decisions, the GNSO rep to the empowered community sends an email to the stakeholder groups and constituencies in GNSO and gives them X number of days to respond with an answer – a yes no answer. And then whatever threshold is associated with those votes would be used to instruct the GNSO's rep to the empowered community.

I only suggest that so that if any of you dismiss this non-Council alternative, should not dismiss it because you think like Amr that it's a new body, or that it's a new structure, dare I say, it's not; it's simply a method of asking the constituencies and stakeholder groups to the extent that we are organized that way, asking them what say you. And they respond with an answer. That happens all the time. And there's no body whatsoever involved.

And, Amr, I would love to hear you answer that after Steve Metalitz if you see concerns about that, that's fine. I just wanted to say that it doesn't require a body, agreed? Okay, Steve Metalitz, and then, Farzi, make sure that you weigh in on this question of whether we should – should it be the Council. Go ahead, Steve Metalitz.

Steve Metalitz: Yes, thank you. I agree with you that – and I think what you just said, Steve, is a partial response to Amr's concern about excessive administrative, you know, overload or whatever. And I think in the same breath where he said that it creates a new administrative burdens, he's talking about having a

separate track of GNSO Council calls because the Council seems to be incapable even of getting through its regular agenda with any consistency.

So I don't really see that there's any additional administrative burden required if we were to recommend that these new powers be exercised by some – in some other way than through the GNSO Council. Let me just kick back to Ed Morris's concern about the NCA. That's a legitimate question.

I think my answer to that is really a question back, which is to whom in the GNSO are the NCAs accountable? I think these powers should be exercised by someone who is accountable to the people who are in and active in the GNSO. And I don't think the NCAs fit that description. So my inclination would be to say that the NCAs would not necessarily have a role in exercising these powers because they are not accountable to anyone in the GNSO.

That – those positions were created in order to facilitate the voting structure that was imposed on the GNSO in the reorganization about 8 or 10 years ago because we needed a tie breaker. No one would agree to an odd number of votes on either – in either house, on either side, so you needed a tie breaker. That's why they're there. They don't – they're not there to be accountable to anybody within the GNSO. And therefore, I don't think it would be appropriate for them to play a formal role in exercising these powers. Thanks.

Steve DelBianco: And to Steve's point, if the NomComm reps to contract and non-contract party house, if they were not voting you could still apply a majority of each house rule. As Steve said, their role is breaking ties within a house. And if both were omitted from Council voting, the majority of each house rules would still work. Okay, I think that I did want to hear from Farzi. Steve, is your hand still up?

Steve Metalitz: No, I'm taking it down.

Steve DelBianco: Okay great. And Farzi.

Farzaneh Badii: Hi, Steve. Farzaneh Badii speaking. So in my opinion, it has to be the Council and I am a little bit – I am not really sure why we might need another method to exercise these powers. Is it the nature of the powers that we are going to be given that will require us to have another method other than the Council? And as Edward said, I have not – I have not really heard any compelling argument that we need another method other than the Council.

So if we want to work on that and I will not say that it should be, I think at the moment Council has to exercise these powers unless we actually come up with a good argument and justification that because of these powers Council – there should be another method. Thank you.

Steve DelBianco: Thank you, Farzi. Appreciate that. So the current straw poll of this group was that there were five of you who said decisions of empowered community, etcetera, should be in Council and one, Steve Metalitz, says no it should not be. And then Marika, you're in the queue and then we'll go to Amr.

Marika Konings: Yes, this is Marika. Thank you, Steve. One of the things I want to note that I had put in the chat as well, one of the questions you may want to ask yourself as well, you know, which problem are you trying to solve by not using the Council as the vehicle to conveying decisions from stakeholder groups and constituencies? I think Steve already pointed out, you know, one issue possible concern with NCAs are accountable to.

It may be worth as well I think are there any other issues? And indeed that may help you then as well either discuss other ways to address those concerns? And, you know, if one concern is indeed certain groups are not necessarily sure that their councilors will vote to reflect what a group has decided, well maybe a potential other solution could be to consider directed voting or having mechanisms within stakeholder groups and constituencies that, you know, have that conversation and make a decision by which then a Council member is bound to vote on those specific decisions.

Or indeed maybe if those issues cannot be addressed through the existing mechanisms maybe indeed then there is a need to look at other ways of taking those decisions. But again, getting to the underlying problems or issues that people see with, you know, the existing mechanisms available may help, you know, think through what would be the solution to address those problems.

Steve DelBianco: Thank you, Marika. I've asked in the chat for Steve Metalitz to get in the queue after Amr and try to address that question of what problems are we attempting to solve by letting GNSO make decisions directly. And Steve will speak to that after Amr. But your other point was that if that was a very limited set of problems to solve you might solve them through directed voting. I appreciate that. Go ahead, Amr.

Amr Elsadr: Thanks, Steve. This is Amr. I just wanted to point out that in relation to Steve Metalitz's point on the NomComm appointees not being representative of any of the GNSO stakeholder groups or constituencies, he's absolutely right. But, again, I just wanted to point out that as we come up with voting thresholds for this, we might want to at least discuss the merits and perhaps not having NomComm appointees' votes begin weighed in or considered as part of the thresholds for voting on the new powers by Council.

I don't see the availability or the existence of the NomComm appointees on Council to be so much a problem. In fact, I think on several occasions they've had great insight and have assisted the GNSO Council immensely whether that is the houseless nonvoting member or the two NomComm appointees who are assigned to each of the houses.

But again, I think we have quite a bit of flexibility to sort of work this out. I don't think that the NomComm appointees are necessary for voting thresholds. I think that there are plenty of scenarios by which even in their absence voting thresholds could work. Earlier we were discussing that Non

Commercial Stakeholder Group councilors are not directed, there are also three constituencies within the Commercial Stakeholder Group who could vote against each other and has been the case on Council on several occasions.

So NomComm appointees are not, strictly speaking, necessary for breaking a tie on Council votes. I just wanted to weigh in with that to make sure we don't proceed under that assumption. Thank you.

Steve DelBianco: Amr, before I turn to Steve Metalitz, when the three Commercial Stakeholder Group constituencies vote, they are directed by their actual constituency. And they don't always see eye to eye. But if we fell back to David Maher's default of a majority of each house, if we fell back to that default, for all decisions related to the empowered community, that's a majority of each house. Well, Steve Metalitz is right, each house has an even number of votes on its councilors today; 12 in the case of non-contract parties and six in the case of contract party house.

So how do you get to a majority of each house if the Registries and Registrars disagree? Or if Non Commercial Stakeholders Group disagrees with the Commercial? That puts falling to the default rule without a NomComm rep voting means that we will more often have ties then we otherwise would. Because you never have a tie when you have the odd number.

And that would mean that the majority of each house rule might well find that GNSO cannot answer an empowered community question to make a decision. And we would end up abstaining under that. So there's a huge implication to the majority of each house rule where there's no mechanism for tie breaking within each house.

And directed voting…

((Crosstalk))

Amr Elsadr: Steve, if I…

Steve DelBianco: Okay, go ahead. And then we'll go to Steve Metalitz.

Amr Elsadr: Yes, apologies for interrupting you, I wasn't sure if you were done or not. But,
                  yes, I appreciate that but, again, we are talking about coming up with new
                  voting thresholds in the GNSO and if we are considering excluding the
                  NomComm appointees appointed to each of the two houses from some of
                  those votes then we don't necessarily have to use the voting thresholds in the
                  traditional sense that we've used them.

                  So although the council will be working to – will be voting – and again, I want
                  to stress this is just a scenario at the top of my head just to point out that it is
                  indeed possible. But it doesn't mean that we actually have to do this. This is
                  just something we could discuss and we could agree on or not. But, again,
                  even in the absence of the NomComm appointees, you can set up a voting
                  thresholds that don't strictly speaking require a majority of each house but
                  perhaps a different threshold that includes the entire Council.

                  And in that sense at least that would help sort of prevent a deadlock on the
                  contracted party side. Of course that isn't a problem on the non-contracted
                  parties because you can have a whole different set of combinations of
                  Commercial Stakeholder Group constituencies along with one or more – one
                  up to six councilors from the Non Commercial Stakeholder Group.

                  So, again, I just want to say we're – when we're talking about using the
                  Council to vote we have to keep in mind that we are also considering that we
                  could come up with entirely new schemes for setting up voting thresholds
                  specific that will need to specifically address the need we have in meeting our
                  – basically not abstaining from votes on empowered community. Thank you.

Steve DelBianco: Amr, we're going to turn to Steve Metalitz, but I've made careful note of what you said because I think that's a perfect segue to where we go next in this conversation which is that if it were to be Council, you've presented the option that we do not, by any means, have to stick with the so-called default of a majority of each house. We can find ways to sound out the councilors without necessarily locking people into houses for which you have to get a majority of each.

That's – that is the beauty of getting rid of the NomComm reps and getting rid of the majority of each house and moving to something more like getting councilor's opinion. But we'll turn to that after we hear Steve Metalitz. And, Steve, I do hope you could address, if possible, Marika's question about which problems are we solving when we try to say the GNSO itself should sound instead of letting Council. Go ahead, Steve.

Steve Metalitz: I think we're solving two problems. One is the one that I've mentioned before which is that this Council was set up for a particular purpose. Its members have been chosen for a particular purpose. Its leadership has been chosen for a particular purpose to carry out particular roles, and there are a bunch of new roles here.

So there's – I don't see any reason to have a presumption that because their job description, you know, simply because I've decided to retain somebody to perform surgery on me doesn't necessarily mean that I also want them to be my dermatologist or vice versa. So there are different responsibilities and I think we need a – to look at it fresh.

The second reason is, as I mentioned, and most of the people on this call were not active at the time that the Board imposed upon us, the structure that we are now – we now have in the Council, is that this – there's no logical requirement that for example, the contracted parties have twice as much in voting power as the non-contracted parties. That was a solution to a problem

that was presented at that time. But it's not necessarily the best solution to exercising these new powers.

And I will say that if you went with a structure that was – excuse me I won't use that word – if you went with an entity that was – or a voting mechanism that was based on the existing stakeholder groups and constituencies, we have an odd number of those so we wouldn't necessarily have – we wouldn't be as apt to have ties as we would in some of the other scenarios that we've talked about here.

I also agree with Amr that no matter who is exercising these powers, we can figure out what the correct voting threshold and voting mechanism would be. It does not – I mean, what we have now, the status quo is there's a default threshold. And so if everything – all these things are assigned or allocated to the GNSO Council, without – if there's no further change then we are in this majority – simple majority vote of each house, which I think is undesirable for a number of reasons, one of which is that some of these decisions are more significant and probably should require a greater showing of support.

And I would say that whether the voting is being made by Council or the voting is being done by the leaders of the constituencies and stakeholder groups as I've proposed. So I hope that that – and as far as directed voting is concerned, yes, I think that's a good thing.

I'm reluctant to, you know, dictate to the Non Commercial Stakeholder Group and its two constituencies, that they have to move to this system even if I, from the outside, think it might be better. Maybe a better approach is to say well, you know, you can handle this as you want but each of these groups has a leadership and regardless of the procedures, you know, the procedures within that stakeholder group or constituency for leadership to take a position may vary.

And I don't know that we need to get into that kind of – that level of micromanagement. But so long as they can vest the authority in somebody in the leadership of each of their groups, then, you know, it's certainly feasible and I think preferable to let those leaders – empower those leaders to make these decisions. Thank you.

Steve DelBianco: Thank you, Steve. Marika put the question by suggesting what problem all you're solving. You didn't answer it that way. You instead said that there is an opportunity, not a problem, but there's an opportunity to take this directly to the GNSO members and thereby not involve Council whose role was not anticipated for this. So I don't think you described a problem we are solving, right, so I think that Marika, you didn't get the clean answer that you wanted so that you could come up with alternative solutions.

Steve Metalitz: Well, I hope that I did…

((Crosstalk))

Steve DelBianco: …Steve's answer is valid, though. Go ahead, Steve.

Steve Metalitz: I'm sorry, I hope that I did. And, again, I think the main problem we are trying to solve here is that we have a group that was selected and whose leadership was selected to carry out – manage the policy development process and other specific things that are in the bylaws. And now these are – there's some completely different roles here. You know, some of them are closer to policy development than others. But questions like the ICANN budget or the inspection rights and so forth, as Ed just mentioned, these may not have anything to do with the policy development process.

So we need to figure out what's the best – the problem we're trying to solve is figure out what is the best way to reflect the will of the GNSO on those questions. And I don't agree that the GNSO Council, which was developed solely for the purpose of solving problems dealing with the policy

development process, in its current format, I don't agree that that's the best solution to the problem.

Steve DelBianco: Got it. So in order to say what problem are we solving, the – you would say that acting on the empowered community powers was not the role of Council, and that you said Council is not the best way to represent GNSO views.

Steve Metalitz: Yes.

Steve DelBianco: Okay got it. And so that is in effect an answer to why not Council. But, Marika, I hope you'll be able to understand that that still gets to the point about when you answer why not Council, I think Steve is giving us his indication of what problem he's solving and it's the problem that Council was not created for this role and it is not, in his opinion, the best way for representing GNSO's views.

All right, are there any further discussions on this should it be Council question? And so let's have the conversation in the remainder of this call, please, of just assuming, for the sake of argument, that it is Council, can we have a discussion on how decisions and appointments would be made in Council? And you do not have to go to the default of a majority of each house. And as Amr said, you do not even have to assume the houses matter at all. We can look at councilors.

And I would ask staff to please put up the chart that I sent over to you, Terri, at the beginning of the call, which is a simple chart showing what – sorry, who is on Council and who they come from and would like to take a queue on the kind of decisions that you would make and what thresholds would be appropriate.

Earlier I had suggested there were only two categories of decisions. One called appointments and the other called bylaws required decisions the GNSO must make in the empowered community. I did want to add that Ed

Morris put into the chat that the exercise of document inspection rights, which is being fleshed out as part of Work Stream 2, could be a third category for GNSO to express its views or to, you know, or to work out the details of a document inspection request.

And so, Ed, that is a third potential way that we could potentially do this. So I think the easiest one is appointments. And so to kick this discussion off, let's assume that we had a nomination coming up for the post-transition – the liaison to the Customer Service Committee of the post-transition IANA. Or we had a decision to make on who's our representative to the empowered community. These are appointments that are required only because of the new bylaws arising out of the transition.

And I'd like to hear a queue talk about an appropriate way that Council, for the sake of argument, how would Council decide on appointments to these new structures? Since no hands are up I'll put – I'll put out an idea that an appointment could be decided on a majority of Council votes. And see what people think of that. Please give me some response. Go ahead, David.

David Maher: David Maher. I still am firmly of the conviction that it should be a majority of both houses.

Steve DelBianco: Thank you, David. So when the question of how to appoint EC reps, question on that, David Maher said majority of each houses. Let's have a queue on that. I had suggested, just for the sake of argument, majority of councilors. And David, yes, David did mean a majority of each house, Amr, because David keeps falling back on what he – what the bylaws call the default rule, majority of each house. Yes. Ed Morris.

Ed Morris: Thanks, Steve. Yes, I'm with David on this. The problem with majority of councilors is the difference in the number of councilors. Actually that's not true at all. Let me rethink – sorry about that. I need to rethink.

((Crosstalk))

Steve DelBianco: No, you're right. You're right, there are 12 councilors in the non-contract party house, Ed, and there are six councilors...

Ed Morris: Right.

Steve DelBianco: …in the contract party house.

Ed Morris: Yes, for some reason I was doubting the basic, Steve, but, yes. So the problem there would be obviously that the contracted party house would be reduced in terms of their influence. And don't want to do that. So I would lean with David's situation, a majority of both houses.

Steve DelBianco: Ed Morris, before you give up the mic. If we ended up saying majority of Council, to address the imbalance that you just spoke of, once upon a time I think it was before you were involved at ICANN, what happened was that the contract party – contract parties, there was no house back then, they had double weighted voting. So if you double weighted the left hand side of the screen, there'd be 12 and 12. So it is possible to say a majority vote of Council – councilors, without going to the majority of each house by simply weighting the contract parties with two votes each. And then you get an equal weight to the two sides and you could still ascertain a majority.

Ed Morris: I would be fine with…

((Crosstalk))

Ed Morris: I would be fine with that.

Steve DelBianco: Okay. Got it, because that enables a majority to emerge without the majority constituting the majority of each house. It's a very – it's a different outcome. That might be the Registrars and the Non Commercial Stakeholder Group

together plus one more vote gets to the majority. And you wouldn't, in that case, have a majority of each house.

Let's go next to Amr.

Amr Elsadr: Thanks, Steve. This is Amr. Appointments to CSC, PTI and the empowered community liaison, the way I see it personally is I believe that there should be a larger consensus amongst the GNSO on these appointments beyond simple majority. I believe, I mean, I don't think this should be a decision – I don't think that the nominees themselves or the appointments should be determined by a simple majority. I think there should be broader agreement within the GNSO on this. And I don't think – I don't think it should be resolved in a way that becomes controversial where you have a large minority of the GNSO disagreeing on who the appointee is.

That's a thought I had now. I'd be happy to go over, I mean, a more nuanced discussion on this later. But this is, I believe, where I stand right now. Thank you. And to be clear, because I just saw the notes, it says a – yes, should be a larger consensus beyond super majority. But that does not necessarily mean that it needs to, again, follow the same traditional voting thresholds that we've used in the past particularly if we explore – such as excluding the NomComm appointees from this. We could think of other sort of recipes for voting threshold.

One at the top of my head, again, I haven't thought this through too much, but one at the top of my head would be, for example, having three of the four stakeholder groups agree to an appointee. You know, something to that effect. Thank you.

Steve DelBianco: Amr, before you give up the mic, keep in mind that the Commercial Stakeholders Group isn't a group, it's a label for three constituencies. So it's tough to apply stakeholder groups. But let me ask you that a simple majority were not appropriate, would 2/3, for instance, I'm just trying to – would 2/3

work for you? And answer that before we move on to Steve Metalitz if you could.

Amr Elsadr: Yes, thanks, Steve. At this point yes I think 2/3 would work but effectively if we're talking about 2/3 of Council, that's one thing. If we're talking about 2/3 of each house, that would be another thing.

Steve DelBianco: No, no, 2/3 of Council.

((Crosstalk))

Amr Elsadr: …my answer to each would be different. Yes, so 2/3 of Council would be certainly more acceptable to me than a simple majority. Thanks. And on the question of…

((Crosstalk))

Amr Elsadr: …of the Commercial Stakeholder Group not being a stakeholder group in a sense, for example, the NCSG is – apologies and point taken. Thanks.

Steve DelBianco: Okay, I'm just suggesting that it's not appropriate to say that the – three of four SGs, I like the simplicity of where you were going, and yet I don't think that would apply and we're not going to restructure things. So I did want to note that Amr said simple majority of Council – councilors – ignoring the house for a moment – a simple majority of councilors is not the appropriate 2/3 you do believe would be appropriate for the appointments category.

And I'm sorry, Ed Morris, and then Steve Metalitz and then David. Ed.

Ed Morris: Old hand, Steve, sorry.

Steve DelBianco: Thank you. Steve Metalitz.

Steve Metalitz: Yes, this is Steve Metalitz. Really just, I mean, Ed described a result if it was one councilor, one vote. But he didn't explain why that would be a problem. And where it is written in, you know, in the scriptures, so to speak, that we have to have a balance among these arbitrary groups. Which in fact, by the way, I think everyone has recognized that these boundaries between Registries and Registrars, and between contracted parties and non-contracted parties, are getting somewhat blurred in the current environment.

We have many members in our Intellectual Property Constituency that are – that operate registries, we have, you know, there are companies that are registrars and that also participate in other constituencies. So this is a bit mechanistic from my point – my viewpoint to say that we have to reject a possible solution because it gives the contracted parties less power than they have under a different system, which is what we have now in the GNSO Council. So I guess I'd like Ed to explain what the problem is.

Steve DelBianco: Yes, that's a fair question. So, Ed, get in the queue after David, you just did. And then David, if you can address Steve's question too, that would be helpful. Go ahead, David.

David Maher: I just wanted to make it clear that I would have no objection to considering changing the threshold so long as the principle of each house, for example, 2/3 of each house, to support an appointment. I think that's something we could consider.

Steve DelBianco: David, if I noted you correctly, you clarified that you're okay to change from majority of each house to some other greater threshold in each house. But you want to retain the each house rule.

David Maher: That's correct.

Steve DelBianco: Okay thanks for clarifying. And then, David, for the sake of argument, because everybody is pursuing this, please play along. Could you answer

Steve Metalitz's question that if we went to a simple majority of councilors, why do you need to maintain a balance that the contract parties have the same number as the non-contracted.

David Maher: Simply because the historic voting threshold system I think is the fairest to ensure that the non-contracted parties don't overwhelm the contracted parties.

Steve DelBianco: Right, but the – okay, so David said it was fairness. Is that right? That's your answer to Steve Metalitz.

David Maher: That's correct.

Steve DelBianco: Okay. Let me ask Ed Morris.

Ed Morris: Yes, thanks Steve. I actually agree with a lot of what Steve Metalitz said about the changing environment in ICANN. However, this group is not charged with restructuring the GNSO. But I'm not even going to argue the theory. Let's talk practical politics. If we take a proposal from this group back to Council and tell our friends in the contracted party house that we're going to have a new system in which your power effectively is reduced by 1/2, this isn't going to pass Council.

So for me it's a nonstarter because it would not be accepted by the current Council, in my opinion. I could be wrong.

Steve DelBianco: As a very practical viewpoint, thank you, Ed. Anyone else in the queue right now? All right, we only have about eight or nine minutes left, and I do have a hard stop at 10:30. I appreciate everybody sticking with us for 90 minutes. What did we accomplish on this call and what do we need to do on our next call? Let's turn to that with the time remaining. Staff notes, do a decent job of summarizing and I like what you called it, which is an Option 1.

And Option 1, as you've – as you put it, is under the assuming Council, speaks for GNSO. I would ask you to put that in your notes. Assuming Council speaks for GNSO, appointments could be made by a majority of Council votes, and then let the notes reflect that we discussed this notion of with 12 and 6 or 18 votes not counting the NomComms; it's 20 votes if you count the NomComm appointments.

I think we've had a lively discussion that shows that there's no – nobody is wedded to having the NomComm appointees be part of the voting thresholds for these decisions. And I realize that could stir up its own set of issues. But I did see a bit of consensus emerging that there's no requirement that the NCAs have a vote to speak for GNSO. There's an option that says that we could move to directed voting as opposed to having individuals vote on their own.

We weighed the idea that if in fact we said it was a majority or 2/3 of councilors that you may or may not double the weight of the contract parties to maintain that balance. And Steve Metalitz asked why the balance? David Maher said, for fairness. Ed Morris was more practical and said that if we did not do that, this drafting team's recommendations would not likely pass Council because it's Council who set up this drafting team and it's Council that would have to approve our recommendations and they would approve it using the default rule, which is a majority of each house.

And David didn't say this but Ed did, there's no way the contract party house – I shouldn't say there's no way – it might be less likely that the contract party house would, by a majority, vote to approve a 2/3 rule for appointments if they had half as many votes as the non-contract party house.

Steve Metalitz, you've put up a note there. Yes, Steve Metalitz indicates that when I put up in the agenda for this call, it was, Number 1, consider direct decisions by GNSO instead of Council; and for the purpose of this call it was five to one of not going there. So for the purpose of discussion we moved to

the next question on the agenda, which was assuming it's Council, propose a voting rule for nominations.

The next decision we want to approach on the next call is that assuming that Council speaks for GNSO, what are the voting rules for approving decisions related to the empowered community? And then I asked to add one more, which is for assuming that Council speaks for GNSO, what would be the voting threshold and rules for approving decisions related to document inspection? So that's like – that's almost a three step – three kinds of decisions we'd want to make.

And if we ended up coming up with rules for appointments, empowered community and document inspection, it would be a easy matter if we had, you know, close to – at least a consensus of this group, it'd be easy to apply those three rules to the entire annex of document that was given to us by staff. In other words, we would be able to answer no matter what it is that the empowered community has to do, it's either an appointment, it's an empowered community decision, or it's a document inspection.

And I had mentioned earlier that it would be my preference as you chair to try to come up with three general rules that would apply to everything rather than go through every single decision as if it were unique.

Are there any other final words about next week's agenda or this week's call? I really appreciate everybody's attention for 90 minutes. I hope we made some progress. And hope I chaired it fairly. Thanks, everyone, and we'll talk to you in a week.

Steve Metalitz: Thanks Steve.

Woman: Thanks, Steve.

Terri Agnew: Once again, the meeting has been adjourned. Thank you very much for joining. (Lance), the operator, if you could please disconnect all remaining lines including recordings and to everyone else, please remember to disconnect your lines. Have a lovely rest of your day.

END