

**GNSO Bylaws Implementation Drafting Team**  
**Thursday, 06 April 2017 at 14:00 UTC**

Apologies: Erika Mann, Julf Helsingius, Matthew Shears, Darcy Southwell (joining late)

Proposed Agenda:

1. Roll Call / Welcome
2. Continue deliberations on:
  - a. 37 (Petition Process)
  - b. 44 (Nominating Director Committee Removal Process)
  - c. 45 (SO/AC Director Removal Process)
  - d. 46 (Board Recall Process)
3. Confirm next steps / next meeting (if needed)

**Discussion Notes:**

Themes: 1) Notion that an individual initiating a petition rises up through the Stakeholder Groups (SGs) and Constituencies (Cs) and how these rise up through the SGs and Cs. 2) Nominating Director Committee removal process. 3) Board removal etc. determining the process by which the GNSO makes its decision.

37 (Petition Process):

- Given that the SGs and Cs as members of the GNSO have to be the conduit to get to Council. Staff pointed out that we need standards for how a petition is raised, which is different from saying that we need procedures to raise these as motions. SGs and Cs have to decide how we instruct our Councilors on a motion. Only the SGs and Cs are the appropriate members of the GNSO.
- Challenge: Procedure -- not a standard -- is the process by which a petition is raised. One question: Does the definition of an SG and C as member of the GNSO align with the definition of an "individual" in the Bylaws?
- ICANN Legal: Agree. The word "standards" didn't mean anything other than "procedures". How the GNSO has those individual petitions raised in the SGs and Cs -- have that documented. In many of the groups the individuals are from their own membership pool, not from the global community. Would have to be a member of an AC/SO.

- Our SO has no individual members (of the GNSO). Decisional Participants are the gatekeepers. Do we have a second set of gatekeepers coming via the relevant SG or C to put forward to the Council?
- The GNSO has members, which are the SGs and Cs. An individual could approach an SG or C and if that individual convinced a member of that SG or C, then it would be up to that SG or C to decide whether to do a petition, which then would be a motion to be considered by the Council.
- But there is a time limit -- 21 days -- there would be quite a few steps to go through in the SG or C.
- It is up to each SG or C to have procedures for moving things on. Each group has its own charters. I don't believe there should be a requirement for the SG or C to create a new procedure -- it would be the same process for deciding to produce a motion, take a decision, etc. under existing procedures. Timing: What can we do to expedite through Council a motion that is pursuant to a petition?
- Do we have to write a procedure now, or just say that there needs to be an expedited procedure to act on petitions brought by an SG or C?
- Look at current GNSO procedures. What is the procedure today for the Council to consider expedited motions? If that isn't sufficient then we can suggest changes.
- I also raise the point of whether it is necessary for this group to determine the procedures. I understand the output from this group will be incorporated in the revised GNSO Operating Procedures. Could be considered by the GNSO Review WG. Are we in a hurry to develop a detailed procedure right now?
- We should have high-level recommendations. The staff report will be published for public comment including items that need to be further developed. We can say that there needs to be a change to procedures, but we don't have to say what they are.
- There are a number of options -- could set up a schedule of contingency meetings for possible petitions. Review whether tweaks will need to be made. The Bylaws say that there needs to be a process so there may need to be work there.
- Our DT is clear that it is the SG or C needs to have the process, and that is the existing process to decide on a motion, but we think there isn't time and are looking for suggestions on how to expedite that process.
- ICANN Legal: Procedures do need to say that in order for a petition to be raised the person would have to approach one of the SGs and Cs. The Bylaws say that there should be procedures on how this is done and this would get pushed to the SG and C to do. Has to be documented somewhere for transparency.
- So, we agree that the GNSO Operating Procedures should say that an individual has to approach a member of an SG or C and use their procedures to form a motion to be considered by Council, and we may need to develop procedures for the expedited consideration of a motion without ability to defer the motion.

From the chat:

Mary Wong: The GNSO can perhaps develop its own rules for who and how to raise a petition, and check in with the other Decisional Participants and ICANN Legal as to consistency across the EC.

Marika Konings: So should it be a requirement then for SG/Cs to define the procedures for their respective members to request a petition?

Amr Elsadr: Is there a mechanism for individuals outside of ICANN's SOs/ACs to contact GNSO SGs/Cs with requests like this?

Mary Wong: @Steve is correct - there is a 21-day period for the petition to be filed

Marika Konings: so maybe it is just a question of communication to the membership of the different groups so that they are aware that a request for petition will follow normal SG/C procedures?

Mary Wong: There is basically a total 28-day period to get this done - 21 for the petition to be submitted to and considered by the relevant Decisional Participant, and then 7 to get the support of another Decisional Participant.

Amr Elsadr: If I'm not mistaken, Council can vote on motions outside of regular meetings, but those are still subject to the ten-day rule on submission of a motion prior to voting on it. Something to consider within the 21-day limitation for submission of petitions?

Samantha Eisner: On the question of the need to document procedures, I refer to the Bylaws at 6.1(g): (g) Each Decisional Participant shall, except as otherwise provided in Annex D, adopt procedures for exercising the rights of such Decisional Participant pursuant to the procedures set forth in Annex D, including (i) who can submit a petition to such Decisional Participant, (ii) the process for an individual to submit a petition to such Decisional Participant, including whether a petition must be accompanied by a rationale, (iii) how the Decisional Participant determines whether to accept or reject a petition, (iv) how the Decisional Participant determines whether an issue subject to a petition has been resolved, (v) how the Decisional Participant determines whether to support or object to actions supported by another Decisional Participant, and (vi) the process for the Decisional Participant to notify its constituents of relevant matters. If the procedure for the GNSO as a Decisional Participant to take in a petition is to expect that to come up from the established SGs and Cs, then there is likely a requirement for documentation of how an individual would initiate that petition conversation, at whatever level of the GNSO structure that responsibility is delegated to

steve metalitz: @Marika, wouldn't those "scheduled petition meetings" have to be set almost weekly throughout the year since one cannot predict just when a decision subject to petition would be made? Does not sound practical.

Darcy Southwell: Agree with Steve M. that regularly scheduled petition meetings are not practical given the very short time frame.

Steve DelBianco [BC]: @Steve -- agree with you that the pre-scheduled Council meetings are not a practical solution.

Marika Konings: @Steve - M. good point - we need to have a closer look at the timing aspect to see how this could work.

steve metalitz: +1 Sam that each SG/C should document its own procedures.

Mary Wong: Note that the time frame for the petition may be short (21+7) but the community will have known long before that when a Board action (e.g. Budget approval) is expected and will take place, so planning can be done way before the petition period starts.

Mary Wong: @Steve DB, yes, got it - we will get back to the DT with that specific answer shortly.

Samantha Eisner: Recall when you're considering the petition phase and expedited procedures, there is also a 7-day window at the end of the 21-day petitioning period for each decisional participant to consider if it will second a petition. So there could be a need for 2 meetings

Samantha Eisner: To clarify my position, it is important that each SG/C have documented procedures on how the petition is raised to them for bringing the motion to Council.

#### 44 (Nominating Director Committee Removal Process):

- Question: Follow the same procedures as 37 (Petition Process)?
- Not clear on whether this has the same time pressure. Number 37 is triggered by an external event, but this is in the hands of the petitioner.
- As soon as the Constituency convinced the Council that starts the 21-day clock. So, there is time to get the Council to consider it, up until the decision is made by the Council to accept it.
- Not sure that is right, but there isn't a double gatekeeping problem.
- The 21 days are outside of Council.
- Receipt of the petition starts the clock. Then the Decisional Participant has to accept or reject.
- Agree with Steve M. Also, there needs to be a discussion period with the petitioner and the director.
- Need a procedure on which that kind of motion could not be deferred and how Council determination would include a discussion with the director and petitioner. At the end of that discussion if the SGs and Cs want to proceed then the Council would vote on the

motion. Procedure for an individual to bring a petition to an SG or C member, for the SG or C member to bring the motion to the Council for consideration, for discussion with petitioner and director, all within the 21-day period from receipt of the petition. There has to be room for discussion, but not for delay.

From the chat:

Samantha Eisner: Note that the language has to be clear that this is a petition.

Marika Konings: Title would be "Motion -- Petition to...."

Darcy Southwell: It looks like the 21-day clock starts running when the D.C. receives a removal petition.

Mary Wong: @Darcy, yes

Samantha Eisner: The timing starts from when the petition is received. It is not based on when the Council decides. Agree with S. Metalitz's reading

Mary Wong: Ditto

Samantha Eisner: It will be important to use standardized language for petitions - though petitions will be brought before the GNSO by way of motion, the rest of the Empowered Community would expect to see it discussed as a PETITION, so there was no confusion about the status of the EC process. This is a semantics issue, not a process issue.

#### 45 (SO/AC Director Removal Process):

- Should the removal of a Contracted Party house director be subjected to approval by the other house?
- Do both houses have to be involved in the removal?
- Some DT members said the vote should be only in the house that nominated the director; others said it should be both houses. Proposal is for it to be only 3/4 of the house that nominated the director. Describe in the Council procedures the way the Council forwards approval of the director for the seats 14 and 15 -- can this be in the consent agenda? That the determination by the House on its director can't be dropped.
- ICANN Legal: There are several decision points. During the 21-day period there has to be a discussion period that includes the person bringing the petition as well as the director, as well as the personal appointed by the GNSO as the rep to the EC Administration. Then there is the final decision point after that community comment period. There are two different times that the Council would take a vote. Would you put that on the Consent agenda with no ability to drop it.

- Until the house introduces the motion for a petition the clock is not running. It is only the house can initiate the petition and it is 3/4 majority of that house. We will need procedural assistance to accommodate a discussion period in that window.
- There are protections in the Bylaws about the point that the individual brings a petition -- says I want to take this director out -- there is an immediate requirement to bring the director and have a conversation. When the person brings to light a petition the directors can participate in the discussion.
- If you are an individual you need to work through the SG or C -- that "individual" has to be a member of the house whose director is being petitioned to remove. Until the motion for petition the clock doesn't start.
- Agree. In practice we will have to be careful how we word the motion. "The BC is bringing this motion on behalf of X".
- ICANN Legal: Once the House has said it wants to remove a director this has to be plotted out. A petition can't be rejected without having the conversation with petitioner and director. There are protections built into this and they have to be maintained.

#### Process Steps:

1. Individual approaches SG/C.
  2. Discussions occur in SG/C.
  3. SG/C initiates a motion to its house, which initiates protections of participation and discussion with the Board member and petitioner and the 21-day clock.
- NOTE: The DT is clear that the clock doesn't start until the SG/C has introduced the motion for petition and the vote is 3/4 of the house whose director is up for removal.

**Action:** Create a timeline in the staff report.

From the chat:

Wolf-Ulrich Knob: To cover the point that a board member is accountable to the entire (SO) community, the other house could be invited to file an opinion on the case but shouldn't be given a decisive role

steve metalitz: +1 Wolf Ulrich -- would not object to requiring 3/4 majority "after providing opportunity for input from the other house" 3/4 majority of the house that selected the director, that is.

steve metalitz: @Sam correct that the motion in this case would have to be rather elaborate, include the rationale, proposed Decisional Party rep, etc.

Lori Schulman: isn't the individual the rep for the group? that's how I took it -- the indemnified individual?

Samantha Eisner: We'd have to check against the Bylaws, which vests the discussion requirement in the Decisional Participant

46 (Board Recall Process):

- Key point: SG/C instruct their Councilor to introduce a motion and there needs to be a second -- a directed introduction of a motion. So, for example, via the NCSG as a directed vote. Then the 21-day period kicks off.

From the chat:

steve metalitz: Sorry, have to drop off shortly. Agree that this (#46) could pretty much follow #44.

Darcy Southwell: Hi, all ... I have to drop in a minute too. Agree that this should follow #44. Because this is the entire Board, the supermajority is across the GNSO Council, not at the house level.

Wolf-Ulrich Knoben: So the maker of a motion re petition shall be a SG/C, not a councilor -- and the seconder?

Mary Wong: Wolf-Ulrich, only Councilors can propose and second motions

Marika Konings: only a Council member can propose a motion. So that is for SG/Cs to define in their procedures that their respective Council members are directed in those instances?

Wolf-Ulrich Knoben: it could be covered under "whereas"