

**ICANN
Transcription
GNSO Bylaws Implementation Drafting Team- call
Wednesday 21 September 2016**

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Attendees:

Farzaneh Badii
Steve Metalitz
Darcy Southwell
Amr Elsadr
David Maher
Edward Morris
Steve Debianco
Tony Harris
Matthew Shears

Apologies:
None

ICANN staff:
Julie Hedlund
Marika Konings
Terri Agnew

Coordinator: Excuse me. 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 21st of September, 2016.

On the call today we have Tony Harris, Edward Morris, Steve Metalitz, Farzaneh Badii, Amr Elsadr, David Maher. Steve DelBianco, Darcy Southwell and Matthew Shears. We 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 you, Steve DelBianco. Please begin.

Julie Hedlund: Steve, this is Julie Hedlund. I just have one other administrative item to mention. And that is we haven't always been mentioning the statements of interest. And staff checked back to see whether or not statements of interest are a requirement for an entity such as a drafting team.

While drafting teams are not specifically mentioned or called out per se in the GNSO Council Operating Procedures, we will note that in that section of the operating procedure, section five, the definition of group is "a work team, working group committee or other such policy development body formed by and under the supervision of the GNSO Council."

While this is not strictly speaking a policy development body, I will note that most of the participants actually do have their links to their SOIs. So just to be consistent, staff suggests that perhaps we should have SOIs for all of the participants.

And so we've also included regularly in our agenda the item that asks people to remember to state any changes to their statements of interest and to update them accordingly.

So a couple of folks will have been contacted to provide statements of interest that might be missing. And I just wanted to point that out. Thank you very much, Steve.

Steve DelBianco: Thank you Julie. I would ask whether staff can import the statements of interest we've all used for the CCWG. Is that allowable?

Julie Hedlund: I should think so, yes. I - I don't see a problem with that.

Steve DelBianco: Are there any members on this drafting team who would object to have staff help us out by copying our statements of interest over from the CCWG?

Julie Hedlund: I would say that is assuming that they're in the same format. There is a specific format that's required for GNSO statements of interest. So that may or may not...

Steve DelBianco: They might be different.

Julie Hedlund: Yes, it might be different. Yes Amr, your GNSO SOI does work indeed.

Steve DelBianco: Okay in the chat, Tony Harris, thank you for joining us for the ISP and Connectivity Providers constituency. But Tony, the report I'm speaking of is the draft we're going to go through today. While it is on your screen, I'm going to ask Terri and Julie to quickly e-mail it to you. We circulated it on Sunday.

And it's - it was me as the Co-Chair. It was just my draft attempt to try to suggest where we are with just two calls and two weeks left until our deadline.

Tony Harris: Thank you very much for that, Steve.

Steve DelBianco: Thank you Tony. So the agenda for today -- and Amr, please as Co-Chair, kick in any time here -- but what I would love to do is to walk through the five pages of our draft report.

That has a lot of let's say intentional outcomes for us. In my belief, it can clarify the degree of support for certain, I guess, assumptions we've made as we've gone along, the degree of support for alternatives as we have moved along.

But it also focuses us -- on the last page -- on specific recommendations on the - if we assume that council speaks for the GNSO and if we need to recommend voting thresholds for the three types of decisions involved.

So there's many benefits to using this report as our walkthrough. And I am completely on board that we could end up being bogged down for a long period of this call on a certain portion of page two or something.

And staff's going to assist me at taking a lot of notes about this document I had invited each of you to edit. But I think it's great some of you have saved your edits to be able to introduce them during this call and that's just fine.

So the idea would be we could refine this report further. And let's keep alive the notion that we could end up with a recommendation to council that may not be a consensus recommendation. We could end up recommending to council both a majority and a minority report. We could end up having multiple alternatives to put in front of council if we can't get a consensus of the nine folks on this team.

So I'll stop there. Are there any other comments on the agenda? Hey great. Thanks everyone. I appreciate it.

So let's dive right in to the report that you have on the screen. I think we can go page by page and take a queue on each page to see where we have edits.

So page one, I probably don't need to walk through it but the key is the consensus at the bottom of page one. I'll take a queue. Everybody can scroll through the document if they like. I'm glad to see there's not much controversy on page one.

Steve Metalitz, please go ahead.

Steve Metalitz: Yes, this is Steve Metalitz. So you said that consensus on the bottom of page one. You're talking about this number one, "who," and it goes over to page two? Or are you talking about something else?

Steve DelBianco: That's right Steve. Go ahead.

Steve Metalitz: Okay. Well my concern is not on page 1 but it's on the "how" page - this "who" question dealt with on page two.

Steve DelBianco: Okay. But Steve, it's fine. Why don't you go right into that?

Steve Metalitz: Okay. Well - and I've sent to the - to you, to the staff a .pdf -- I hope it arrived -- that has my edits there. It really goes down to the bottom of this section kind of in the middle of page two just before "how."

I think this, what's down here doesn't quite get what we - first what we found with regard to the staff analysis that was undertaken about references to GNSO Council and GNSO Supermajority. I think it - that it found 17 references. Of those - of the multitudinous references to GNSO in the bylaws, it - on 17 they refer either to GNSO Council or GNSO Supermajority.

So I think what our conclusion was that those bylaws -- unless they are later changed -- do suggest that the GNSO Council should act in those 17 instances that were identified.

But we did not - what - the last paragraph seems to indicate that - it says "the DT decided to assume that council would speak for GNSO." I think that's only true in those 17 instances. And then on the other 84 or so -- I don't know if that's the right number -- that we did not have a - we do not have a consensus on who should speak for GNSO.

So that's the essence of my - the edits that I've sent in.

Steve DelBianco: Thank you Steve. I've asked staff to display the .pdf that you just circulated in the hopes that we would be able to look specifically at the edits that you've proposed.

Now I have a question for Julie while staff is doing that. And Julie, as you know, on the top of page two, I reference the document that you guys prepared very quickly for us that identifying those 17 references.

So Steve Metalitz is suggesting that elsewhere in the - Steve, did you say new bylaws or all bylaws where GNSO is referenced?

Steve Metalitz: The new bylaws. I mean, the 84 figure comes from your statement in here that there were 101 relevant instances in the new bylaws. That's in the middle of page one. I'm not sure that that's accurate. I - the analysis that we had done six months ago, four months ago identified 101 new responsibilities. But it doesn't necessarily say GNSO in each case.

Steve DelBianco: You're exactly right Steve. The 101 number was the count in the staff table for the instances in the new bylaws where the empowered community and/or ACs and SOs are called upon with rights and responsibilities. So I didn't mean to imply that those were 101 references to GNSO.

Rather, they were the same table that staff circulated in late August, the table that indicated times that the empowered community or ACs and SOs had rights and responsibilities.

With that, having said that, Steve, how does that impact on the proposed edits since I don't really know whether the new bylaws reference specifically GNSO...

Steve Metalitz: Yes.

Steve DelBianco: ...any more than 17 times?

Steve Metalitz: Right. It affects it only in my reference to 84 other instances because that's not the right number. But there are many - there are a number of other instances that - the staff analysis has identified 17 instances where it either says GNSO Council or GNSO Supermajority which is defined in the bylaws in terms of council voting. So it seems from that that those - in those areas we have some clear indication in the bylaws that have been adopted that GNSO Council should speak for the GNSO. But in all the other areas we don't.

Steve DelBianco: So Steve I'm going to take that up. So at the top of page two of the document, I'm going to ask staff's assistance to verify that the 17 references to GNSO that you found, do they represent all of the references that are relevant.

And I realize the 101 often refers to the empowered community and not to GNSO specifically. And the empowered community includes us as the decisional participant.

So Terri, if that's not clear, and Julie if that's not clear, let's hash that out now. How do we help to resolve the question that Steve Metalitz is putting to us

here? And Julie indicates that they're loading Steve Metalitz's mark-up. Steve has put it in red ink right up here at the top of page two.

And Steve, part of what you've done is make us make sure that we're accurate at stating what the facts are in a descriptive way, not being normative about it, just describe, right? I appreciate that.

But I do want to indicate that the way the bylaws interpreted the TCWG consensus proposal is also a question. It's possible that when our lawyers and ICANN's lawyers drafted the bylaws and the community commented on them, it's possible that the bylaws added the words "council" or "supermajority" in places where GNSO was the only one we had in our report.

And all of - several of us on this call were authors of that report and know that many times we would speak to the word "empowered community" and we didn't specifically list each and every member of the empowered community because the assumption was that ACs and SOs would join as they saw fit.

So when the empowered community is mentioned, the bylaws do lay out a relatively specific way that decisional participants would enroll in the empowered community. So not all 101 instances will refer specifically to GNSO.

All right Steve, we have on the screen - if everyone would please scroll to page two, you'll see Steve Metalitz's edits in red. I have no problem with Steve's edits -- I believe that they're accurate -- except for I would take out the word - the number 84, Steve...

Steve Metalitz: Yes, I'd agree with that.

Steve DelBianco: ...because but that's just the 101 minus 17. Thank you, Steve.

Matthew Shears, that doesn't help very much what you said in the chat. So bring up the section of the bylaws where the decisional participant for the empowered community is referenced as GNSO and let's see what it says. Does it say GNSO or does it say GNSO Council?

All of you I'm sure have your handy copy of the ICANN amended bylaws handy. And that would be the place to look for that.

All right. So are there any other comments on the top of page two. Steve is helping to correct the record of it on what it is and what it says, not what we should do.

All right. We're into page two. Any other comments on page two?

All right. Paste in what council looks like and discuss this notion of a default voting threshold as we move into page three. Ed Morris.

Ed Morris: Yes hi Steve. Reach agreement, if I were - if this were going to be in the final report and I'm sitting there in council, I actually may want to know was it close to consensus, was it a rough consensus. In other words, we tend to operate on variations of the term consensus.

I don't know what "didn't reach agreement" means because my perspective from talking to others and from our past calls are that there is a limited, a very -- well actually it's a small group to start with - but most of us were in agreement of having council exercise powers. It's not a full consensus but, I guess, the question is how much of a minority is there opposed to having council exercise the powers.

Steve DelBianco: Hey that's a great question. And between now and September 30, we definitely need to record in here the specific level of support and agreement. I completely agree that we need to do that.

We could do a straw poll today. I didn't want to force everyone to go on the record immediately but it helps so much to understand where people stand.

So Ed refers to the specific paragraph and page and we'll do a quick straw poll since we have good participation on today's call.

Ed Morris: Thanks Steve. What if we go to - actually Steve Metalitz's edits, "DT did not reach agreement on how the GNSO would exercise its new authorities in the other 84 instances." My perspective from the past calls are that most of us wanted council to be the person or the entity exercising those responsibilities. So I guess that's where my question would be at this point.

Steve DelBianco: All right. Why don't we take a queue and we'll discuss that topic for a bit. And since we have all nine of us on the call with only two calls left, I do intend over the next several minutes to do a straw poll on what about instances where neither GNSO nor GNSO Council are mentioned, where instances where the empowered community...

Now some of this dovetails to what Matthew Shears put into the chat. Remember, the empowered community as defined in the new bylaws includes the GNSO as defined in section 11.1.

And all of you know what section 11.1 looks like. It's been there for, well, 14 years. Section 11.1 of the bylaws describes GNSO and says that it consists of constituency, stakeholder groups, two houses and a council. And section 11.2 - 11.3 goes on to describe how council works, okay?

So the GNSO -- this is to Matt Shears' item in the chat -- the empowered community in the new bylaws includes the GNSO and when it describes the GNSO, council is one part of that. But nowhere in the empowered community part of the bylaws does it say that the empowered community is council.

So that makes Steve Metalitz's point definitely a valid one in that there may be as many as 80-something instances where the empowered community is referenced. And the empowered community is not explicitly council.

It is up to our group to give an opinion about whether we think that should be council or should not be council. Okay? So on that topic with an intent to take a straw poll in the next several minutes.

Ed Morris, did you want to conclude on that? Your hand is still up.

Amr.

Amr Elsadri: Thanks Steve. This is Amr. To be honest, I'm not entirely convinced that the section here that says, the part that says "unless the bylaws are further amended as necessary." Or I don't think at least that we've agreed on this yet.

I understand the conundrum we're facing regarding whether we should - the references to the GNSO or whether the council may or whether it's appropriate for it to act on behalf of the GNSO in certain instances, but I don't think we've agreed that the bylaws actually need to be amended for the council to do this.

I think the old bylaw language -- and I don't think that it has changed in the new bylaws -- but they describe the GNSO and the council in the way regarding the GNSO's PDP where they say it's responsible for it but they don't necessarily say that the GNSO council cannot do more than just be responsible for managing the policy as well in the process.

And as our preliminary report here points out, there are other processes that the GNSO council does manage that are - that do not lead to the formation of consensus policies.

So I would say that the bylaws actually suggest -- even though they don't do so explicitly -- but they suggest that the council's role does actually go beyond traditional PDPs.

So I appreciate that we're not agreed on this but I don't think it's fair to say that we agree on this part saying "unless bylaws are further amended" because speaking for myself, I'm not entirely convinced that they need to be amended for the council to speak to the GNSO - on behalf of the GNSO in more than these 17 instances. Thank you.

Steve DelBianco: Amr, you're right that the bylaws say that council - the bylaws don't indicate that council may not do anything other than the policy. And that isn't the question we're raising here.

We're specifically suggesting that there are 80-some instances in the new bylaws where empowered community or ACs and SOs are referenced but not the word GNSO and GNSO Council.

And we're asking the question normatively: Is this Drafting Team going to recommend that council speak for GNSO on the new powers given to the empowered community?

And there are - this has nothing to do with the old bylaws. This is strictly about the new ones. Okay? So that will be the question we'll want to consider.

And you're right Amr, it may not be necessary to put the words "unless the bylaws are further amended." I'd rather be as clear as we can be, both to us and to our colleagues in council.

So right in this section in the middle of page two, we're going to do a straw poll. And I'll rewrite that paragraph. And the straw poll will answer the question: Does our Drafting Team recommend that GNSO Council speak for

GNSO in new powers that are specifically in the bylaws given to the empowered community? And I've put that into the chat.

Because it is not clear. There are 17 instances where the new bylaws reference GNSO Council or GNSO Supermajority. Hey, we all got that. But Steve Metalitz is right, there are many more instances where just "empowered community" is referenced.

And I refer you to the empowered community in the bylaws where empowered community includes the GNSO and then it refers to section 11.1 of the bylaws where GNSO is described as five things -- constituency, stakeholder groups, houses and a council.

So the word GNSO does not mean council in the bylaws. We're not going to change anything about that. What we're simply going to try to figure out is if this Drafting Team believes -- and to what level of support is there - for saying that council is the assumed speaker for GNSO in all powers in the empowered community.

So Amr, that was a long answer to you. And I want to give you a chance to come on that before I go to Steve Metalitz.

Amr Elsadr: Thanks Steve. This is Amr again. I agree with basically everything you have said. And to be clear, I'm not disputing the fact that this Drafting Team needs to make that decision on whether council acts on behalf of the GNSO or whether another structure may be more suitable. I'm not disputing that at all. And I agree that the Drafting Team did agree to move forward under this assumption.

But it's just the little section on "unless bylaws are further amended." It's just that little section. I'm not entirely sure it's accurate. And it may not be necessary. It may or may not be necessary as we move forward on our exercise. Thank you.

Steve DelBianco: That's a good point. And we're going to rewrite this paragraph after we figure out the level of support on the Drafting Team for the normative statement of: Should council speak for GNSO in the empowered community?

Steve Metalitz, please.

Steve Metalitz: Thank you. Steve Metalitz. Just to clarify that phrase that Amr asked about. That refers to the 17 instances. So the bylaws as they now read, having been revised - they now have these 11 references to GNSO - well 17 references in all, 11 to GNSO Council, six to GNSO Supermajority.

And even though many of those involve activities that are not management of the policy development process, what I think we're prepared to assume for purposes of this Drafting Team is that those powers would be exercised by the GNSO Council.

That's the way the bylaws read, that we may -- as Steve DelBianco pointed out -- that may or may not reflect what the CCWG said. And I would defer to those who were CCWG participants on whether that was accurately transcribed.

And it may not be the right place for those powers. But that's what the bylaws say now. So that's why it just says "unless the bylaws are further amended." We're basically saying this is the - we're prepared to accept for purposes of this discussion that this is the status quo.

Now in all these other instances, whether 84 of them or however many they are, where there are new authorities given to the GNSO, either as a member of the empowered community or otherwise -- for example as a claimant or as a requester of investigative documents and so forth -- these are all new powers given to the GNSO.

And my answer to the question Steve DelBianco phrased in the chat is no, we should not recommend that council speak for GNSO.

The GNSO Council is - it exists because of section 11.2.d of the bylaws that says "a GNSO Council responsible for managing the policy development process of the GNSO as described in section 11.3."

And if you look through 11.3, it's all about the policy development process and about things like organizing the council. The council selects leadership of its own. That makes sense. And then there is a provision that calls for voting in the council format for members of the board.

But in fact this - the GNSO Council is twice stated as responsible for managing the policy development process of the GNSO.

So if we go by the bylaws as they stand now, none of these new powers should be exercised by the GNSO Council except in - perhaps in an instance in which they involve the policy development process.

But even there, that's not management of the policy development process. That's a claim under a policy or it's an investigation of how a policy is being implemented and whether there's corruption. These are new powers that are given to the GNSO and there's no reason why they should be exercised by the GNSO Council.

The GNSO also consists of the stakeholder groups, the constituencies. So that's where I believe the - and where I think several of our constituencies within the Non-Contracted Parties House believe that this authority ought to lie. Thank you.

Steve DelBianco: Thank you Steve. We're going to go to Ed Morris. Now Marika put into the chat the bylaws do not limit council to policy development only. And you're right Marika. They assign policy development management - policy

management to the council but they do not say the council may not do anything else. And so that's not necessary to make Steve's point.

Steve Metalitz's point is more reflected in the bylaws themselves which have been there for quite a while. Section 11.2 already said that the GNSO includes four different elements, only one of which is the council. And as you indicate, it goes on to describe how council was organized and how council handles policy. And I realize that the word "only" does not appear.

And it's not essential for Steve's argument. Steve Metalitz is making the argument that there is nothing in the bylaws to indicate that only council may speak for GNSO, certainly not for the new bylaws. We're only talking about the new bylaws on this Drafting Team. We're not rewriting history.

So it's very clear that the empowered community includes the GNSO. And while the GNSO includes the council, there is no definitive statement that council and only council can speak for GNSO. And this is why we're trying to resolve this who question.

And I guess I can record Steve Metalitz's vote is the answer is no to the question of should council speak for GNSO in all other instances where the EC or ACs and SOs are given new powers in the bylaws. Does that - Steve Metalitz was a no.

And Ed Morris, you're up next but each of you please be prepared to answer. Go ahead Ed.

Ed Morris: Thanks Steve. I'll be a yes. I agree with Steve Metalitz in that we don't have to choose council to exercise these powers. But we can if we want to.

My argument very simply is this. We're not empowered - or the concept of this DT was not to redo the world, as you mentioned Steve, Steve DeIBianco that is.

And my goal simply is to take the new powers, plug them into the existing framework and then let the other groups, which are more broadly - consist of the GNSO Review Panel. I believe the Non-Contracted Party House has a GNSO Futures Group that's looking at the future.

So my goal with this group very simply is to try to simplify things, put it in council -- which basically has been exercising powers beyond policy development for some time -- and then in the future these wider groups that a little bit more representative of everybody, then they can take a look at the entire structure.

So what I'm saying right now is yes, I do propose placing this within council for now with the proviso that we have other groups looking at the totality of the GNSO power structure. And it's for them, not for us, to try to alter what we've been doing recently and what I believe we should be doing starting October 1 with the new powers. Thanks.

Steve DelBianco: Thank you Ed. That was a yes on the question which I'm going to reframe into the chat.

David Maher.

David Maher: I would vote yes. This is David Maher.

Steve DelBianco: Okay. So I still need to hear from Amr, Darcy, Farzaneh, Matt Shears and Tony. And Matt Shears was a yes. And I put the question back into the chat just in case anyone doesn't see it. Amr was a yes. The business constituency gave me instructions over the weekend, thinking my chair had off for a moment. Business Constituency said no. Farzaneh was a yes. Darcy was a yes. And Tony Harris.

Tony Harris: Yes. The ISPCP Constituency are totally opposed to the GNSO Council assuming the role of spokesman or lead on any issues outside of GTLD policy. That's the position of our constituency.

Steve DelBianco: Okay. Thank you Tony. So if I have this right, we are at six to three. And we will make sure that the document in this middle of page two at the end of the "who" section - I will rewrite that to indicate and summarize this discussion.

I will note that when we - I will put in the section of the bylaws that defines GNSO. I will make sure people understand that - council's part of GNSO. I will indicate that everyone agreed council may represent GNSO but does not have to.

But when it came down to the Drafting Team's view, it's a six to three. And six to three is a two-thirds while majority and maybe some would say a supermajority. We're definitely going to reflect it as a significant minority did not agree.

And that opens the door that maybe we have alternatives or a minority report at some point so just foreshadowing a bit. We still have time and move ahead.

Amr, let's not redo history. We're not - I don't think Tony Harris is saying that from now on council doesn't speak for GNSO. No, let's just stay with the question please. The question is: Should council speak for GNSO on matters where the new bylaws refer to the EC and ACs and SOs? And those are the 80-something instances where it just says ACs, SOs and empowered community without referring specifically to GNSO Council or GNSO Supermajority.

No need to re-litigate the past because I don't think that will serve any of our interests. Amr, you're next in the queue.

Amr Elsadr: Thanks Steve. This is Amr. Yes sorry, I wasn't trying to re-litigate the past, just pointing out that there are things in the bylaws that actually, such as annex 1.a and annex - a.1 and a.1 that point out that the GNSO Council does indeed have a role beyond the PDP. So I was - I'm sorry. I apologize about the point I made. It may not have been terribly appropriate.

But I actually wanted to talk about something else here on the straw poll and this Drafting Team's recommendations going forward. I think we do have to acknowledge that there are a lot of very pressing unresolved issues that we haven't addressed as thoroughly as I would personally like to.

We're talking about whether council should represent the GNSO or not. And there are valid arguments on both sides of the fence. I don't think we've had the time or the opportunity to go ahead and do this thoroughly.

And there is also the question of Nom Comm appointees on council, whether they should have a role. And I also appreciate arguments on both sides of the fence of those. And I think there's a lot of work that we should do ideally before making recommendations based on those discussions.

So I think moving forward, we're taking a straw poll now. We're trying to determine what level of consensus we have on the Drafting Team.

I think it may be helpful to also acknowledge that there is work that is undone and we may want to include a recommendation saying that whatever we come up with, another group should probably take this up, a group that has more time to follow up on the work that we have done and do a more thorough job.

The GNSO Working Group - the GNSO Review Working Group comes to mind. They are also a (unintelligible) working group implementing the GNSO review recommendations that were adopted by the board. They're also

assuming the role of the Standing Committee on Improvements which is given tasks by the GNSO Council to review its operating procedures.

So if we do come up with some recommendations, I think it may be a good sort of place for us to be where we think these are temporary recommendations that will temporarily take place, more work needs to be done.

We haven't had the time or the opportunity to do our work well and we should I think urge the GNSO Council to make sure this work is followed up on and picked up by another group. Thank you.

Steve DelBianco: Thank you Amr. I will note that this is a five-page draft document prepared. And we're only at the middle of page two where we have moved past the question of should council speak for GNSO.

Everything else in this document attempts to address the very two questions that you raised. The rest of this document is on the assumption that council speaks for GNSO. It cuts to the question of does the Nom Comm reps vote and should we have a majority of each house.

And then you'll see on page five, the three questions we need to resolve in the next two weeks are if council does speak for GNSO, what are the voting thresholds for nominations, decisions and investigations.

If we can get to that, then we would be complete in our recommendations. So we certainly have it on our draft report. Let's see how far we get on this call.

Steve Metalitz.

Steve Metalitz: Yes, thank you. This is Steve Metalitz. I agree with a lot of what Amr said. And I'd like to focus on our deadline of September 30 that was given to us.

You know, we - this group has spent almost half its lifespan getting organized so it really has only been in existence - it will be in existence for only five weeks.

And so I think we have to be realistic about what we can accomplish in that period. So I tend to agree, we're - we probably aren't going to come out with a fully baked recommendation. I'm pretty sure of that.

And maybe we should be thinking about recasting this report as laying out the issues, laying out the arguments pro and con and encouraging further discussion on them within the stakeholder groups and constituencies where I believe and my constituency believes these decisions ought to be made, not in the GNSO Council.

So that would be my recommendation for - you know, I think we could probably put one paragraph after page two here or middle of page two and say that.

But I do think the report should, if we can, in a summary form lay out the arguments on the different - on both sides on this issue and encourage that it be taken up by the stakeholder groups and constituencies. Thanks.

Steve DelBianco: Thank you Steve.

All right everyone. Let's move into the middle of page two, putting aside the first threshold question and moving to the question that on the assumption that council speaks for the GNSO on decisions of the empowered community, ACs and SOs in the new bylaws, how should it be done. And that's the "how" question in the middle of page two.

And David Maher, staff will resend the .pdf for the third time. I'm sorry that it didn't all come through for you. But David, you can scroll up and down in Adobe and the entire document's right here.

Okay? So the questions are: How should we decide on voting thresholds? That is to say, would they require majorities in each house? And then we'll get to the question of Nom Comm representatives and whether they vote.

Steve Metalitz, your hand is up.

Steve Metalitz: I'm sorry, that was an old hand.

Steve DelBianco: Okay great. Thank you Steve. So at the bottom of page two and moving into page three, this is recapping where we've worked before. We talked about the default threshold with respect to a majority of each house where the Nom Comm reps do vote.

I note in here that our discussion reflects that the default threshold has been used to make decisions on non-policy matters for at least the 12 years I've been involved at ICANN.

And of course the majority of each house rule has only been place -- somebody help me with that -- about seven years? When did we put the house structure in? I bet somebody knows.

Steve Metalitz: I think it's about seven years or eight years.

Steve DelBianco: Thank you Steve.

Steve Metalitz: I have to go back and look.

Steve DelBianco: Steve, prior to the house structure, how did council vote on items that were not related to policy? They use double-weighted voting?

Steve Metalitz: Well we had weighted voting. We had a brief period - again this is Steve Metalitz -- we had a brief period of weighted voting.

But let me just correct one thing that you said. This provision about the GNSO Council does not date back 14 years. For the first several years of ICANN we had the Names Council and it had seven constituencies, each of which had one vote. So that's how ICANN was originally organized.

And then in the Stewart Lin era, we can ICANN 2.0. At that time the CCTLD groups seceded from the Names Council. And that's when the CCNSO was set up and the GNSO was set up so in this current - more or less its current form. So that's just a little bit of the pre-history here. Thank you.

Steve DelBianco: Thank you Steve.

I'm answering Farzaneh's point in the chat. And Farzaneh, I mean, I'll help you understand. We are going to get this report done one way or another. And the report may have firm recommendations or it may have majority and minority reports.

But we were asked to recommend who and how. We have a significant minority who disagrees about the who. But we know how to get our work done.

We're going to move on to the how and that's what the majority of this report is about, is the how. So let's move on to that.

And it's perfectly acceptable that our Drafting Team's report will note a significant minority and we'll at least come up with the level of support on this Drafting Team for voting thresholds on the assumption that it's council.

Okay. And staff, Steve Metalitz is asking flesh out the issues. Okay, staff, Steve Metalitz wants to be sure that the notes reflect his notion that it be the constituency and stakeholder groups and not council. And there were three

votes in total that had the same view as Steve. So we'll be sure that that's reflected in the report. Thank you.

Okay. Let's move on. So I did in here indicate the GNSO guidance process because staff brought it to our attention as something that was added to the bylaws last year.

I am reaching the conclusion that it requires a supermajority to approve a recommendation. So I don't know how this GNSO Guidance Process, or GGP, in the middle of page three is of any help to us at all.

Is there anyone who wants to keep alive the GGP or simply move on the main question in front of us so voting thresholds? Okay. I'll leave it in the report but I don't believe we need to get into it. Steve Metalitz.

Steve Metalitz: Yes this is Steve Metalitz. I just had one comment regarding the paragraph actually just before the discussion of the GGP. And that is the paragraph that starts at the bottom of page two and goes over to page three and noting that the default threshold has been used to make a lot of decisions, a number of decisions on non-policy matters. That is true.

And I think - I would suggest that this group indicate that that situation may not be sustainable. I mean, the GNSO Council has acted outside is constitutional powers as set out in the bylaws many, many times. And everyone's gone along with it. And I'm sure there may be instances in the future where people will go along with it.

But it's not really sustainable in the long run and, you know - especially to an organization that prides itself on accountability and living up to the rules and having transparency in its operations. It should - there's a mismatch between what the GNSO Council's been doing and what its powers are under the bylaws as they now stand.

So I would suggest that we include there a sense that that default - use of the default majority rule and having GNSO Council deciding these non-policy development issues is not sustainable. Thank you.

Steve DelBianco: Steve Metalitz, I'm going to ask you to clarify. I will definitely note right after that paragraph that some of the Drafting Team noted that council is not explicitly given jurisdiction over non-policy matters nor is it prohibited. Okay? So everyone relax.

I just want Steve to explain - if somebody said it's not sustainable, why. And Steve Metalitz, how would you answer the question about why it's - how is it not sustainable?

Steve Metalitz: Well, you know, you can have a system in which everybody winks at the rules and says we're going to do - because we have the power to do something, we're going to do it anyway even though the rules don't provide us with authority to do that. That can go on for quite a while.

But history suggests -- and we don't have to get into a lot of other non-ICANN examples -- that ultimately that undermines the legitimacy of the institution that is exercising these powers.

I'm not saying that - you know, there are ways to deal with this such as by amending the bylaws to give the GNSO Council more powers. And maybe that's a solution that should be considered.

But right now we have a mismatch. And I don't think that is in the long run sustainable. Thank you.

Steve DelBianco: Thank you Steve. And I'll note that in the report that - note it that the bylaws do not grant council that authority and to meet standards of accountability it may not be sustainable. And I'll put that in the report.

Okay. Let's move on. We are in page three. We skipped past the GGP which we've never used and doesn't really help us here.

Now we get to the middle of page three where the Drafting Team is considering whether to require majority or supermajority of each house, whether that's the appropriate way for GNSO to exercise its rights and responsibilities in the empowered community.

I noted that there are advocates in this group for an alternative threshold for EC decisions and that would not alter the present structure. Council would still be split into houses. It would be structured exactly the way it is for policy matters.

The question is that for exercising empowered community nominations and decisions, we have considered what you'll see on the next couple of pages the idea of just majority of councilors or supermajority of councilors without regard to requiring majorities or supermajorities of each house.

I note in here on the bottom of page three that when we considered this alternative, we maintained the balance. We proposed maintaining a balance. Since the non-contract parties have twice as many councilors as the contract parties, we double weighted the contract parties' votes so that we have a balance in the number of council votes.

Are there any comments on page three before we move on to the table on - and the Nominating Committee? Great.

So at the bottom of page three I said that the discussion considered whether the two Nom Comm appointees should vote. I said that the argument against Nom Comm voting was that they're not selected by or accountable to the community defined in the GNSO.

And they're not. They may act that way from time to time. Some of them may be more interested in speaking with their respective house than others but there's nothing that requires that they either be selected by or accountable to the house where they sit and vote. I don't think there's any dispute in that fact.

There might be dispute on the statement some have made which was that the Nom Comms were given votes in order to break ties in each house. I guess we could get into that, see if you want to support that statement.

And then I had concluded that we did not yet reach consensus about whether to allow the Nom Comms to vote in a voting threshold of a majority of counselors. So I would like to try to discover that today as we consider the table that's on the next page.

Is there anyone who would like to comment on page before we move on? Steve Metalitz and then Ed Morris. And again this is the setup comments. Yes, go ahead Steve.

Steve Metalitz: Yes just to say that I think the report - I mean, I think you've - you have a sentence here that well summarizes the argument against NCA vote. So maybe there should also be a sentence for those who think the NCA should vote as to why they think so or how they respond to these arguments.

Again I think our - the value that we - of this report could be to help flesh out the issues and the arguments. So I just think that might be missing from that paragraph as it now stands. Thanks.

Steve DelBianco: I want to make sure I understand that. What was missing?

Steve Metalitz: You have the argument against NCA vote. You don't have the argument for NCA votes.

Steve DelBianco: Good point. I'm not sure - I don't understand where there could be an argument for it. So if somebody has an argument for why NCA should vote, let's add it to the report. Okay?

Somebody said, Julie, hasn't - said the table on voting does not show up in the .pdf. Oh, that's surprising. But Julie, you'll be able to bring it up separately. Oh, look at that, that's really odd. It was an embedded .pdf. So Julie will be able to bring that up separately.

Let me ask you a question. All of you who received the attachment to your e-mail of the .pdf, are you able to bring up the .pdf in your own computers? And that I'm speaking of is page four, the one that has the table with the yellow highlight. Darcy, thank you, yes. And Amr said yes. It was both in the Word and the .pdf. Thanks everyone.

We have Ed Morris.

Ed Morris: Hi Steve. Regarding the NCAs, I've been conflicted on this in a number of ways. So I've reached out to our or the NCSG Nom Comm appointee. I've talked to some folks who have served on the Nom Comm in the past. I've talked to two of the three current NCAs on council.

And I can tell you one thing, that if our report goes to council and suggests that the NCAs are excluded, the current NCAs will do everything possible to ensure that our report is not accepted by council. And I sent out an e-mail I received from (Jill Pelskinis) -- she's the NCPH NCA -- basically stating that.

In terms of justification for including the NCAs, in the proposal that I threw out on the list earlier today I noted that the bylaws state that the NCA appointees are to act on equal footing with other councilors. And NCA can be elected chair of council.

It would be quite interesting if we had an NCA chair of council who was to act as our chair for the - as a decisional participant yet he or she was not allowed to participate in discussions or to vote on issues related to the empowered community.

So I think that's a fairly valid, bylaws-based argument for including the NCAs in the discussion and insofar as they're allowed to vote in council to continue that provision for now at least until the GNSO Review Group takes a look at the totality of the situation. Thanks.

Steve DelBianco: Ed, this is Steve. Let me personally thank you for being so specific with a response. And I'll note that your letter from today cites bylaw section 11.2.a.5 where the Nom Comm reps are to act on equal footing. So I will reflect that in the argument for NCA in that paragraph. And I'll add that. Thank you.

David Maher.

David Maher: This is David Maher. I agree with that. I think that's a very well-stated support for the powers of the NCA.

Steve DelBianco: Thank you. Steve Metalitz.

Steve Metalitz: Well I was -- this is Steve Metalitz -- I was going to respond to Ed. But I think the point is that if that's the argument that proponents of having the NCA wish to put in the report, obviously that - I have no objection to it.

I think the reference to the bylaws actually refers to the non-voting member being entitled to participate on equal footing. That's for the non-voting member.

And I don't find it all anomalous that we might choose a person - that GNSO might choose a person to represent it as a decisional participant in the

empowered community who doesn't have a vote on what positions should be taken. That's not at all an unusual situation.

So that person doesn't have to shift hats as you do, Steve DelBianco, between being Chair and being a representative of a constituency. That wouldn't be at all anomalous, in my view.

But if this is the argument that the proponents of the NCA vote want to put forward, obviously that - they're entitled to do that. Thank you.

Steve DelBianco: Ed Morris, 11.2 is not the section you're speaking of. Maybe you're thinking of 11.5? So would you update your reference because I don't think it's right?

Ed Morris: I see. It's actually 11.3 which states "the three representatives selected by the ICANN Nominating Committee, one of which will be non-voting but otherwise entitled to participate on equal footing with other members of the GNSO Council, including the making and accepting of motions and of serving as chair if elected."

That could be read either way, either just referring to the non-voting or it could be read as referring to all of the Nom Comm Council. So I do concede that Steve may have a point there. Though I'm not willing to go as far as to say it's a definite point. There is a - as I look at it now, there is a comma there.

So he - but the principle... I mean, if you're to argue you have the position, you would have to state that the non-voting member would be able - entitled to participate on equal footing with other members of the GNSO Council but the voting members can't? That's doesn't tend to make much sense to me. Thanks.

Steve DelBianco: Okay. All right. Let's keep in mind that when those bylaws were written about council we have the opportunity in describing how council - as speaker for

GNSO, how does council vote on decisions and nominations in the empowered community.

So that is where we can decide that the Drafting Team wants to recommend that Nom Comms do or don't. I guess the assumption is that the voting Nom Comm reps do since that's in the bylaws. But we are free to recommend otherwise.

Man 1: Steve, I agree with that. But just from a practical standpoint, I'm sitting at a council table. We - the - it's - something related to the empowered community comes here. Do we tell the Nom Comm appointees to please leave the table? I mean, how do we actually do that?

To me, if we're basing the vote in the powers within council, it really doesn't make much sense to suddenly have to stop the meeting and have the Nom Comm appointees leave the building.

And I will also point out the very practical concern is that if we go with the proposal - because don't forget, we're a group that was established by the GNSO Council. Council is going to vote on our proposal.

And I'll just tell you it is my considered opinion that any proposal that we make that does not include the NCAs as voting participants -- given the fact that the NCAs themselves will be voting on this proposal -- has virtually no chance of being accepted by council. Thanks.

Steve DelBianco: Ed made that point earlier. And believe us, we all get it. We all worked in council. We understand that council itself has to approve our recommendations with a GNSO supermajority. And that vote will happen according to the current rules.

We are trying to actually do the right thing here and make sure that we make decisions for the GNSO that are accountable to the GNSO. As you know,

there's an entire Workstream 2 project that talks about SO and AC accountability to the stakeholders that it is designated to serve.

GNSO has this odd attribute of voting representatives in the council who are neither appointed by or accountable to the community of the Generic Names Supporting Organization. And so there are other considerations.

I realize what you said about council and that's just politics. Let's bring up page four. I would like to see we are at nine - we have still 35 minutes and we need to get to the meaty stuff on page five.

I'd like to try to reflect in the report the degree of support on this Drafting Team -- since we have all nine people here today -- what is the degree of support for the voting structure that you have on the screen in front of you.

This is what we'll call the alternative voting structure. It does not care about house. This is a voting structure where majorities and supermajorities are determined by voting councilors, with two twists.

There's a double weighting for all the contract parties to achieve balance, David. And number two, this proposal on your screen in front of you doesn't contain votes for the Nom Committee, the Nominating Committee reps.

This is the same table we've discussed last week. It was circulated ten days ago and again over the weekend. So I'd like to have a discussion with an intent to do a straw poll in the next five to ten minutes on the degree of support for this alternative.

And if that prevails and has a significant support, we'll continue to flesh out the question of whether the Nom Comm reps vote but the real (unintelligible) to this is removing the majority of each house from the determination of majority and double weighting the contract parties.

So let's take a queue on that. No, we're not done with that discussion Amr because it's baked into this discussion as well.

Go ahead, David Maher.

David Maher: This is David Maher. I did not support this alternative voting scheme. I still think, as a matter of principle, it's essential that we support voting by houses. Thank you.

Steve DelBianco: Thank you David. So David is a no for the alternative.

Ed Morris.

Ed Morris: I agree with David. I'd be a no for the alternative as well.

Marika, I - while I'm waiting for the queue there, Marika's put into the chat, we're supposed to come back with consensus recommendations and recommendations for further changes.

And what you put into the chat Marika, I hope that wasn't intended to surprise us. We knew that. I do think it would be helpful to tell us what you believe the word "consensus" means for drafting teams because we know what it means for working groups.

And I've been trying to say that two-thirds of nine is a majority but three of nine is a significant minority. So I'm trying to use words and phrases that I've learned in the working group world of GNSO. And I'd appreciate your guidance as to whether drafting teams work on the same rules.

So while Marika is going to answer that, let's please go to Darcy and then Amr on this alternative majority determination.

Darcy.

Darcy Southwell: Thanks Steve. Darcy for the record. I also vote no. I think we have to maintain the majority of house voting. As David said, I agree, it's sort of a - this - you know, it's fundamental fairness but I think we're setting ourselves up for failure by not creating an environment that the GNSO is sort of a majority - I mean, the houses are both equally representative, the decisions are equally representative.

And so that the GNSO in general is, you know - and I think Amr said it very articulately earlier in some meetings about, you know, they need to be in general agreement on these decisions. Thanks.

Steve DelBianco: Darcy, I do want to point out that they are equally represented in the alternative model. It doesn't change your vote, I understand that. But they are equally represented. They each have 12.

Amr.

Amr Elsadr: Thanks Steve. This is Amr. Yes, I'm tying this in with the NCA issue. And to be honest, I'm not completely sold on just the fact that the NCA should be involved representing the GNSO on the empowered community. I think there's a lot of merit to the arguments against involvement of the NCA.

But again, I don't think we've had a terribly thorough discussion on this. I think there's a lot more we could do. And if I'm undecided on that, I don't see how I could really weigh in on an opinion with this voting scheme. If I agree that the NCA is not necessary then I think these voting schemes are very helpful and it would be fun to play around with a lot of different scenarios and see which ones may be appropriate.

Like I said from the beginning, I'm completely open to new sort of thresholds being set up, taking houses into consideration or not. But again, I think it's difficult for me to go ahead and support one opinion or the other without doing

a lot more. And one thing that comes to mind is that we as a group have not discussed what our issues are with any of the current or previous NCAs or NomCom members. I think that would be something we should do.

Steve DelBianco: Sorry, Amr. The last thing - I'm sorry. It just caught me there. Because the last thing we're ever going to do is talk about individuals, and this notion of having problems with individuals, this has nothing to do with that. It's simply the fact that the NomComs are not appointed by and accountable to the GNSO constituency, that's all.

Amr Elsadr: Yes I'm just wondering if they have any - if they have more insight into this and reasons why they believe they should be involved, and I'd like to hear it. I think it would be important for the drafting team members to hear it. I would agree with the NomCom appointees on the council now if they decide to vote against any recommendations we provide that limits their ability to participate, simply because we haven't done on our homework as thoroughly as we should have.

If we did want them to support those sorts of positions, then we should give them good reason to do so. But that's just my - why I believe we need more work done on that and I think it would be extremely important for us to recommend that another group picks this up. Thanks.

Steve DelBianco: Amr, before you let go of the mic, if the table in front of you did keep the NCA votes, so in the second yellow column, Amr, imagine there was a one and one so it's 13 and 13. So then I would say, Amr, would you support this alternative, which is a simple majority and supermajority of councilors, include NCAs, as opposed to a majority of each house? Do you know enough to know how you would react to that?

Amr Elsadr: I would find that idea to be interesting, and I would want to explore further why it would be a better scenario than doing it across houses. Again, I think we need to talk about this more. But yes I definitely wouldn't discount it.

Steve DelBianco: Open and interesting and somewhat depends on the discussion. Thank you, Amr. Appreciate that. So we still have to hear from five others about whether they support continuing discussion and exploration or - discuss a potential recommendation to come up with a council voting scheme does not include majorities of each house. The business constituency was a yes. IPC and ISPs?

And then, Marika, while waiting for them to answer, I'm going to let Marika jump in. Your hand is up.

Marika Konings: Yes, thank you, Steve. I basically wanted to respond to your question on the consensus part. And although the GNSO working group guidelines here specifically refer to GNSO working groups, it is my assumption that when talking about consensus, the council was referring to the consensus as it's reflected there. I'm not aware at least of another definition that exists within the GNSO world. And in that context, consensus is defined as a position where only a small minority disagrees but most agree.

And if I recall well, and I'm happy to stand corrected there, I believe one of the reasons why the resolution was written in such a way was to avoid, you know, bringing the discussion back into the council. So if recommendations would come back that would not have the consensus, it would likely result in the council redoing the data that may have already happened in the drafting team without either being able to come to a resolution.

So I think that's why the desire as expressed by the council was to obtain consensus recommendations, you know, assuming that those would reflect the views of the broader GNSO and also then result in the vote that the council also indicated an intent to use or - the supported intent to have for the eventual recommendations when those are considered by the GNSO council.

And, you know, to help you as well, I've circulated the methodology that is used. I know we've been using voting here, but there's a little bit hesitation in that regard in the council - or in the working group guidelines, apologies, and using votes as, you know, it really used to be clear, you know, what people are deciding on, is everyone able to participate. So it's a more iterative process as is being described there, although of course (unintelligible) working towards a very tight deadline which may require the use of polls to get at least quick assessment of where people stand. So I hope that is helpful.

Steve DelBianco: Yes. As a practical matter, I don't know what the difference is between a poll and vote, but both are to determine the temperature of our group. And I appreciate that, Marika. Given what you just read and what you know, have we been doing this appropriately, at least so far in coming with up with a six out of nine with regard to council, the question we resolved today? We don't have consensus in other words on the who question.

Marika Konings: Yes this is Marika. I can add I think it's something that the working group guidelines also point out as one of the differences indeed. And there's no hard, fast rule on that where does the line lie between consensus and, you know, strong support of significant opposition, which, you know, in certain cases lie very closely together. It's indeed a chair determination to work through that where that boundary lies.

And again, I think it's part of how that process is explained and that may require some more iteration in this group to ensure that everyone agree where that falls and indeed, you know, did everyone weigh on the question, was everyone clear indeed about what the specific question was. But of course it doesn't take away that at the end of the day, the council is hoping or expecting to obtain consensus recommendation. So hopefully that is something as well the drafting team will keep in mind as it goes through its deliberation and comes up with a potential recommendation.

Steve DelBianco: So, Marika, I will ask you to alert us any time you believe we have deviated from these practices that you circulated. Because it's helpful to circulate them, but interpreting them is completely subjective. I just read them again and I think we're following as close as we can to the spirit of what we're supposed to do in an effort to arrive at consensus. If we cannot get consensus under that definition, we are going to give a report to council, and the report will indicate where there's objections, where there's concerns, what alternatives were considered and disregarded. Please alert us if you think we are not on track.

Steve Metalitz?

Steve Metalitz: Yes, thank you, Steve. Getting back to the question on the table I think, I'm afraid I have to I guess have my vote recorded as abstain at this point because my constituency does not think that these decisions should be taken over by GNSO Council, and we've already gone through the reasons for that. So I'm having, to be honest, I'm having a little difficulty getting them to focus on the question of if they are taken over by GNSO Council, how should the votes be allocated.

I mean I will say that I agree with Amr that this is a - an interesting and important option and it has the advantage of not using the house structure, which is of course something that our constituency strongly objects to. So it may be preferable to some alternatives, but at this point I don't really have instructions to vote for it, and so I'll have to abstain at this point.

Steve DelBianco: That's really helpful. Appreciate that. Tony Harris?

Tony Harris: Yes, I have to echo what Steve said. We need to discuss this in our constituency.

Steve DelBianco: I need to...

Tony Harris: I will be abstaining right now.

Steve DelBianco: That's fine, Tony. Thank you. And we'll have another shot at this later on. Matthew Shears and Farzi? Okay. Matt is a no. Farzi? Okay. So I'm just going to record that we had two abstentions, both of whom noted they're open to the idea and it's interesting, which is exactly what Amr said, but it looks as if there's only - I guess there was only one yes, which was the BC, to continue to explore this. So I will note that in the description of this table.

And I do think that the discussion was mostly about moving away from majority of each house, and I didn't want that to be completely sidelined by the NomCom appointee voting. But we will return to the NomCom appointee voting as we turn to the next page. And the next page is the last page is where I laid out in a table -- and I'm going to ask staff to put the PDF back up, thank you -- and the PDF here says that if we are going to come up with a recommendation, and it won't be necessarily consensus, it might only be a majority, if we have a recommendation, the GNSO Council speaks for the GNSO, how do we say that the council should decide the three critical questions?

And everyone please scroll to the last page. And I think it's pretty self-explanatory. I decided to seed it a little bit with my sort of view. It doesn't mean that we've discussed this enough to know that this is what all of you think. I'm going to quickly summarize where I'm going to propose here and ask questions. And then Ed Morris I'd like you to go next and describe what your recommendation was in the letter you circulated today.

Steve and Tony, knowing that you haven't discussed this with your groups, we aren't going to do a vote or a straw poll on this table on Page 5. So please just be creative. Come up with your considerations that if you suspended belief and said when it comes to a nomination, is a simple majority of a each house good or should it be higher. Give your views, to the extent that you know them, but we won't try to do a straw poll in the next 20 minutes. Okay?

So what I put here under nominations is that I think a majority of each house - - this is just me personally -- sounds appropriate and we've been using it for awhile. With respect to decisions made by the GNSO on empowered community matters, then I sort of think we probably need to move to the supermajority level. I think that when it comes to decisions on whether document requests or an investigation, those aren't final decisions. Those are initiating a process, and it's my belief that a simple majority of each house would be appropriate for that.

So that's sort of my view, and none of you are bound to these views. I'm just asking people to be creative. And I'd like Ed Morris to go next.

Ed Morris: Thanks, Steve. Under GNSO decision, I would move investigation from the third box into the second box because it is more of a community power in that in order for it to actually occur, we have to work with other members of the empowered community, and getting an audit in a third party auditing firm is a fairly substantial decision. So I would actually move that in with the other decisions that we would be taking in the empowered community.

For the nominations...

Steve DelBianco: Would you stop? Wait, wait, wait. Could you stop and clarify? You know this better than everyone else. On a previous call, Ed, we thought that the GNSO, that is to say ACs and SOs who were decisional participants, on their own can initiate document inspection requests and investigations in 22.7 and 22.8. And under that assumption -- this may not have been a call that you attended -- there was no need to coordinate with the other members of the empowered community. The third row in this table in other words was an acting alone row. Did we get that wrong?

Ed Morris: Yes actually we did. It may have been my fault. Investigations - in order - we request an investigation but in order for an investigation to occur, you have to have three members - three decisional participants to agree on it.

Steve DelBianco: Oh okay. I got it.

Ed Morris: In other words it triggers ICANN hiring an auditing firm to come in and look at the books. That's what the investigation right is.

Steve DelBianco: So, Ed, let's move the word investigation in 22.8 up into the second row. I had that wrong.

Ed Morris: Exactly.

Steve DelBianco: Okay. Consider it done. Consider it done. Thank you, Ed. And please go on.

Ed Morris: Fantastic. For nominations, I, firstly, when I initially was putting together a chart before speaking with others, I was fine with just having the simple majority. Having spoken to a few other people that wanted to have a little bit higher level of consensus, in what I sent out today I proposed 60%, which is what council currently uses to select chair or the vice chairs within the house.

So although I'm proposing the 60%, I would propose the 60% just to have a little bit more buy in to the folks we nominate. I'm happy to live with the majority principle. I agree with you, Steve, supermajority for decisions makes sense to me because that should be a very high thresholds. These powers should not be used lightly.

And in terms of the inspection request, I actually would prefer a bit lower threshold than simple majority. I'd like to have the equivalent of any SG to be able to ask for document. So Steve Metalitz in the IPC, they want a document, they just have to go to the BC, ISBC, get it going. I'd even go lower than that if others would buy into it. But basically a one-third --

majority -- one third minority, a request by one-third of councilors in any house would be sufficient for me, at least in my view, should be sufficient for an inspection request.

But again, if you want to go with majority of one house or both houses, I'm fine with that too. The basic principle, in my mind, is decisions should be a very high threshold, nominations should be a middle group, and the inspection request should be the lowest threshold that we believe is appropriate. Thanks.

Steve DelBianco: Ed, thank you. And I'll note in the letter that you circulated this morning you also said that you might even consider the standard that we currently use to request an issues report, which was one one-sixth of each house.

Ed Morris: That was a typo, Steve. That should be one-quarter of each house or one-half of one house.

Steve DelBianco: One quarter or one half, I got it.

Ed Morris: Yes. And that actually does make a bit of sense to me, philosophically, because requesting an issue report and requesting documents, in my mind there's some similarity between those two.

Steve DelBianco: All right fantastic. I appreciate that. And this is a DT proposal doc. It's about a page and a half long that Ed circulated this morning. And I will try to reflect that in this table right after we conclude our call. I may switch the rows to be columns so I'll have enough room for lots of different alternatives as you move down the page. Steve Metalitz, please?

Steve Metalitz: Yes this is Steve Metalitz. I just had a couple of questions about this, maybe to clarify. One is when you say that it's currently the rule for nominations, what nominations are we talking about here currently?

Steve DelBianco: We just made a nomination as the liaison to the customer standing committee from council.

Steve Metalitz: Yes we did...

((Crosstalk))

Steve Metalitz: Okay go ahead.

Steve DelBianco: We've done nominations for review teams under the affirmation of commitments and cross - those are the two examples that I had in the document. So that's all I was speaking there. If you believe that I should take out the words "and is currently the rule for nominations," I'm happy to take those words out because (unintelligible).

Steve Metalitz: No I mean - I think it is but I think it probably applies to a wide range of things. I think it's - it includes, you know, some fairly ministerial decision that, you know, or - let me put it that way. I think the nominations come on a spectrum and this is one of the - this is sort of - some of the decisions that will be made under the revised bylaws will be at one of the spectrum in terms of significant and maybe the current practice also applies to less significant nominations, let's put it that way.

The example I would give -- and I don't mean to denigrate the role -- but, you know, the GNSO liaison to the GAC, which became somewhat controversial for various circumstances, I mean it's an important job but it's not the same, to me, on the same level as being a member of the empowered community decision making team, or whatever that is.

The other question I have is just to understand the distinction between the first row and the second row here. As I - I think you put it this way at one of our earlier meetings, and I found it very useful, and that is this issue between who decisions and what decisions. We would be - so for example the first row

would apply in deciding who would be our representative on the empowered community executive committee, whatever that name is, and the second row would be instructing that person as to how to exercise those authorities on anything that comes before that. Is that basically - is that an accurate description of this distinction?

Steve DelBianco: Exactly it. And I'll add that to the second row under decisions, decisions made by initiate, respond or instructions to our representatives. I'll add that to it. That's exactly what I meant. And, Steve Metalitz, can I ask you to clarify on the nominations row, I'll take out the words "currently the rule for nomination." Let me just take that out and ask you specifically I only came up with things like empowered community, customer standing committee, IANA functions review team and other review teams that are now part of the post-transition bylaws. On the spectrum of nominations, do those feel to you that they deserve a higher level than majority of each house?

Steve Metalitz: Well possibly. And then particularly the empowered community one because that's a person, you know, that is kind of making some life-or-death decisions for the organization potentially. I understand and I'm somewhat reassured by the fact that we would be instructing that person based on a supermajority under your proposal here so that that person might be empowered to make life-or-death decisions but we, you know, he or she couldn't pull the plug on his or her own, it would take a supermajority to say that.

But recognizing the reality, you know, you can't always instruct people on every single thing that might come up. So I guess my one hesitation is on that one as to whether a higher level should be considered. I don't have a firm position on that. And again this is all subject to the caveat that you mentioned at the beginning as to what the role of council should be here. But that was the one I was thinking of.

Some of these others like, you know, the review teams, some of the review teams that the council - excuse me, that would be appointed by GNSO are

the same ones that GNSO - I mean they're roughly similar to the affirmation of - or they're quite similar to the affirmation of commitments review teams that are ongoing. So maybe there is some precedent there. Thanks.

Steve DelBianco: Right. And we do get - as we brought the affirmation review into the bylaws, the GNSO can nominate up to seven individuals. Remember we worked so hard to get that because GNSO was woefully underrepresented. So this way we get to nominate up to seven, and the chairs of the respective ACs and SOs, all of them, not the empowered community but all ACs and SOs, the chairs would elect up to 21 people for each of the review teams, and that means three from each of the seven ACs and SOs. But to the extent that let's say that ASO only gave one name, then there are two more openings. And that's why we over-nominate with the expectation that extra members could be selected to get up to 21.

So the nominations themselves would be a slate. We'd end up with a slate of up to seven names coming from GNSO that would go into the mix, and then the GNSO's decision who to select is another decision that's made on the nomination. So, Steve, I'll note that you think it should be higher for the EC rep, the empowered community rep, and I'll just note that as a thought underneath the nominations. Do I have that right?

Steve Metalitz: That's fine.

Steve DelBianco: Awesome. Let's take any other folks in the queue to discuss how they feel about these voting thresholds for the three types of decisions in the empowered community. Ed and Amr, you're going back and forth. It'd be great to hear you articulate that for all of us, because I haven't been following your chat. Go ahead, Amr.

Amr Elsadr: Thanks, Steve. This is Amr. Yes I believe what I said I think was captured in the notes on the side by (Julie). I think the nominations in general, I've always believed this about nominations ever since the GNSO Council starting

nominating people to different positions, but I do believe it is certainly desirable if there's some sense of consensus on the council when it comes to one candidate being nominated to a position that where he or she represents the GNSO. So generally speaking, I believe the nominations should have a high threshold, a high voting threshold.

As far as the decisions in response to petitions of the EC or initiating inspection requests, well I think on the decisions regarding the (unintelligible), I think those should also have some sort of high voting threshold, probably higher than a simple majority. And - but I think inspection requests should certainly have a very low one, possibly as low as requesting issues reports, as Ed pointed out earlier, or maybe if a little higher than maybe a threshold similar to the threshold used to initiate PDPs, which I believe is a third of each house or a simple majority of one house, I believe, if I'm not mistaken that was the threshold. But I think it should be a low one. Thank you.

Steve DelBianco: Amr, thank you. Let me ask you to clarify. On the nomination row, when you said a consensus of council, what does that mean, a consensus of council, in your opinion?

Amr Elsadr: Yes I said some sense of consensus. I think ideally I think it would be no one group on council can veto a council decision like this. But I think it should certainly be desirable that the council does its best to find a candidate - some supermajority of council agree on. I think a simple majority is just - I think it's not a good idea when it comes to nominating one candidate to a job. I think there should be broader agreement.

And so when I say consensus, I use the word loosely, at least some sense of consensus. I think a supermajority might be a desirable, but I also recognize that I don't want to make a selection too difficult. But if council can't find a candidate that a supermajority can agree on, then I think it's a bad thing for the GNSO in general. Thank you.

Steve DelBianco: Okay. So Amr, I'll record that you would like it to be higher than majority but are you willing to say that you want it to be 60% like Ed Morris recommended, 60% of each house or supermajority? Where would I put you for now?

Amr Elsadr: I would definitely prefer 60% to a simple majority, but I would - I think I would prefer a supermajority to 60%.

Steve DelBianco: Got it.

Amr Elsadr: A supermajority, as explained in consensus levels for the GNSO working group. Thanks.

Steve DelBianco: All right. And I have that at the top. I'll tell you what, I describe supermajority of the GNSO Council in the top row of the right-hand column, and that's not a working group method, supermajority, it's in the bylaws of GNSO. So it's not a working group. It's two-thirds of each house or three-quarters of one and the majority of the other. So that's what I mean by supermajority.

Amr Elsadr: Yes, sorry, Steve, I misspoke. I meant the council definition of supermajority. Thanks. We're talking about council, not working group. Thanks.

Steve DelBianco: Okay. You got me confused there. All right, we only have three minutes. I don't see any other hands up. So we have been I think successful, Amr, at working through the kinds of things that would show up in our recommendations. They may not be consensus recommendations for reasons we all explored on this call. We may not have a consensus recommendation. We'll have perhaps a minority report we'll explore and explain.

If I do a good enough job in drafting the report, we may not need a minority report because I'll articulate what the minority views are right in our report. But knowing that we are handing this to a council, who asked us for consensus and instead got a report that laid out what the majority wants, the

council may decide to act on that, or they may not. And they put it back to further study, who knows.

But let's continue to work at this. I'll update this draft and then I will send it to (Julie) so that (Julie) can add anything that I've missed, because she took notes during the call, and then we'll send it to all of you in the next two days with an invitation to edit sections and circulate to everybody so that on our next call we can probably move to closure on this report. That would be ideal.

Are there any other closing comments? All right. Thanks everyone. Have a great day. Appreciate it.

Woman: (Unintelligible) Steve DelBianco, there was a request on the list about whether or not the timing of the next call works. I know at least one person, I think it was Darcy, correct me if I'm wrong, suggested that was not going to work for her. Do we want to keep the timing of the next call like the same as it is?

Steve DelBianco: How many - indicate a no if you cannot make next Wednesday at this time? Please indicate a no if you cannot make next Wednesday. And I'm sure it's going to be you, Darcy. Maybe we've already lost her.

Woman: She says no. Matthew Shears says no.

Steve DelBianco: All right. How many can make September 29 at the same time? I can. September 29 at the same time, please give me a green checkmark.

Woman: Dave and (Mark).

Steve DelBianco: David, is that a checkmark or are you raising your hand to speak?

David Maher: That's a green checkmark.

Steve DelBianco: All right. Steve Metalitz cannot make next Thursday at this time and we need Steve certainly for the articulation of the minority view and (unintelligible) and Ed Morris. All right so we - we're going to have to do a doodle poll. And I'm going to - I'm sorry to say that, but staff could you circulate a doodle poll with the universe of next Wednesday and next Thursday, the 28th and 29th?

Woman: Yes, we can certainly do that.

Steve DelBianco: Thank you very much. Thanks everyone.

Woman: Thanks.

Woman: Bye-bye.

Woman: Thanks, bye.

Coordinator: Once again the meeting has been adjourned. Thank you very much for joining. Please remember to disconnect all remaining lines and have a wonderful rest of your day.

END