

**ICANN
Transcription
GNSO Bylaws Implementation Drafting Team- call
Monday 10 October 2016 at 14:00 UTC**

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Attendees:

Amr Elsadr
Darcy Southwell
Edward Morris
Farzaneh Badii
Steve Delbianco
Steve Metalitz
Matthew Shears
Wolf-Ulrich Knoben

Apologies: None

ICANN Staff:

Julie Hedlund
Marika Konings
Glen de Saint Géry
Terri Agnew
Yeşim Nazlar

Terri Agnew: Good morning, good afternoon and good evening. Welcome to the GNSO Bylaws Implementation Drafting Team call held on the 10th of October, 2016. On the call today we have Steve DelBianco, Steve Metalitz, Ed Morris, Amr

Elsadr, Farzi Badii and Darcy Southwell. We have listed apologies from David Maher.

From staff we have Julie Hedlund, Marika Konings, Glen de Saint Géry, Yesim Nazlar, and myself, Terri Agnew.

I would like to remind all participants to please state your name before speaking for transcription purposes. With this I'll turn it back over to Steve DelBianco. Please begin.

Steve DelBianco: Thank you. Hey, welcome everyone. I want to thank staff for following up so quickly after our last call with specific answers to two questions and then thank Darcy, Wolf-Ulrich, and Ed for specifically looking at the mapping document to try to move that ahead.

What we're going to try to accomplish today is to finish our mapping document, to see whether we have a majority set of conclusions, and then we'll decide how to reflect that in the draft report that we send over to Council.

And our goal is still to try to conclude today, in the next 90 minutes, so that Council can have our report at the end of the day. And that assumes that there would be edits suggested today that I could turn around for all of you to approve via email during the rest of the day. Are there any other questions before we get started on that? Any other comments?

Great, so hearing none what I would prefer everyone do is – I realize the document is rather wide, it's difficult to look at the map on the Adobe. I strongly recommend you bring it up in either Word or some other PDF viewer on your local machine so that you can more easily navigate but it's completely up to you.

I wanted to first of all tackle two items in the email I sent around to everyone, which was two items that we talked about but staff gave us new information on it. One is the new bylaw section 17.3. and this is the Customer Standing Committee charter. The Customer Standing Committee charter so that's 17.3. we covered this briefly last week but I think the staff was able to inform us about some extra information. So it's 17.3, on the charter for the CSC.

And it requires a threshold that we've never seen before. According to the bylaws, the new bylaws, the threshold of the new bylaws says a simple majority of GNSO Council. That's in the bylaw. Now that I probably think is a mistake because the simple majority of GNSO Council – I have never seen that anywhere in any other document. It's not in the existing set of voting criteria in the section 11.7 in the ICANN bylaws.

So I would ask this group would you prefer to amend that to a majority of each house since it's the only place in here that uses the phrase a majority of Council. Hello, Wolf-Ulrich. We'll take a queue on that. Steve Metalitz, you're up first.

Steve Metalitz: Yes, thank you. Does this group have the authority to amend the ICANN bylaws?

Steve DelBianco: Well of course not, Steve, nothing like the sort. We have the authority only to make a recommendation for an implementation plan for the drafting team. So if the implementation plan would include recommendations, staff would turn around and come up with language to amend the bylaws and language to amend the GNSO policy and procedures. Those would be subject to votes of GNSO Council and go out for public comment. There's no authority implied here. It's just what do we want to recommend, Steve.

Steve Metalitz: Okay well thank you. I'm opposed to recommending changes to the ICANN bylaws unless we also recommend changes to address the authority of GNSO Council to act on these – on these new powers that are given under

the bylaws. So if we're going to recommend amending the bylaws, then let's look at the full package of what we need to look – what we need to recommend. Thanks.

Steve DelBianco: Hey, Steve, for clarity, for clarity then, are you suggesting that if we amended the bylaws to make it clear that the scope of Council can include non-policy items, that you would consider that satisfactory?

Steve Metalitz: Absolutely not. I'm opposed to that. But if...

Steve DelBianco: Thought so.

Steve Metalitz: ...the majority on this drafting team believes that that to be the case then I think they should be recommending a change to the bylaws. And I raised that on the last call and I got no support for it. But this is the first time, I believe, in which our recommendation – what you've just brought up here would be the first time in which our recommendation would include a recommended change to the bylaws. And I think if we open that then we should be discussing the full range of possible amendments.

Steve DelBianco: Got it, Steve. And I gave you that opportunity to clarify it for that reason. All right, so what we're discussing, and I'd like to see if we can get a queue to close this item, we're on item 17.3d as in David. It's the charter for the CSC. And this is the document, 17.3 if you're looking for the page number, it's Page 11 of 34. And you'll see in bold type that I put in there that GNSO Council may approve amendments by a majority of each house. And that is the proposal for this or do we leave it as the bylaws have said, a simple majority of GNSO Council?

So I'd like to see whether this group can come up with a consensus or a majority as to whether we would recommend leaving it majority of GNSO Council or change it to majority of each house? Amr.

Amr Elsadr: Hi, Steve. Thanks. This is Amr. Yes, I'm not entirely sure that we need to recommend a change to that bylaw. The bylaws says a simple majority of the GNSO and ccNSO Councils. But, again, if we are planning on recommending that this be done via a simple majority of each house within the GNSO Council, then this is something that could be clarified, I believe, in the Operating Procedures language and it would not conflict with the language in the bylaws. At least I can't see how it would. I would think that a simple majority of each house of the GNSO Council would not conflict with a simple majority of the Council in the bylaws language in general.

((Crosstalk))

Steve DelBianco: Hey, Amr, it's Steve. With all due respect, that's just not going to work. The words, "majority of Council" are fundamentally different than majority of each house. We wouldn't want to assume that the words "majority of Council" infers majority of each house. If we believe that's the case, Amr, we're going to need to make that recommendation because they're not the same thing.

Amr Elsadr: I agree they're not the same thing. But if I were to think that's within the realm of what majority of Council means, one interpretation of that could be a majority of each house. So I'm just saying that a majority of each house would not conflict with the bylaw, although the by law may provide other options besides majority of each house.

((Crosstalk))

Steve DelBianco: See, Amr, Amr, that's exactly the point. If we leave it alone then a majority of Council does not cover majority of each house. You could have a majority of Council that did not cover majority of each house. And I realize that a majority of each house is a majority of Council, but the opposite is not true. So if this group wants to recommend...

((Crosstalk))

Amr Elsadr: That is – I agree with you, Steve. This is Amr again. I agree with you. And that's why I'm saying that if we want to be specific in what kind of simple majority of Council is required, that we don't need to make a bylaws amendment because if we include a guideline in the Operating Procedures that requires a simple majority of each house, that would fall under the umbrella of a simple majority of Council. And so it wouldn't directly conflict with it, it's just that it adds a second sort of qualifier to what sort of threshold is required but it doesn't conflict with the bylaw. That's the point I was trying to make.

Steve DelBianco: Amr, if the reticence is that wanting to recommend changes to the bylaws then I have to inform you that this group's work will eventually result in a change to the ICANN bylaws. There's a section in the bylaws, 11.7, which describes how the GNSO Council votes. And it's in that section that we would be potentially, I mean, it's very likely we will recommend today on this call that a GNSO super majority was required to modify the PTI amendments.

So we are going to make recommendations that will result in some small changes to the section of the bylaws regarding GNSO Council. So we don't have to shy away from that. And I don't even know where to go with your answer because you're suggesting to leave it in the bylaws as a majority of GNSO which is not the same thing as a majority of each house. And then try to clarify that that the GNSO procedures override the bylaws by saying that a majority of Council is not enough, it has to be a majority of each house.

But I did say...

((Crosstalk))

Amr Elsadr: This is Amr again.

Steve DelBianco: Yes, go ahead.

Amr Elsadr: Yeah, that is true. What you're saying is true. And it's not that I'm trying to avoid any amendments to the bylaws. But if you also think about it, if we recommend a change to that bylaw now, then at some point in the future we do come up with some sort of alternative voting scheme on Council, then we would have to change the bylaw again.

Steve DelBianco: That's right.

Amr Elsadr: So I'm just thinking, yeah, so I'm just thinking right now if we have this bylaw we have a clarification in the Operating Procedures. If for any reason the Council or the GNSO decides it wants to change this voting scheme to another form of simple majority on the GNSO Council, then we'll have the latitude to do that. If we make that change now, then the bylaw will be far too specific to allow this sort of flexibility in the future. But as I said...

((Crosstalk))

Amr Elsadr: ...for the time being, I don't think that the two conflict with each other. They're not mutually exclusive. Thank you.

Steve DelBianco: All right, so let's try to close this decision. I have two people that expressed an opinion of don't change – don't recommend changing that bylaw, leave it simple majority of GNSO Council. I have two people, Steve Metalitz and Amr, who want to leave it alone. Are there any other comments on this? And no one is recommending changing it.

And then we'll simply note in our report that this is a unique and undefined threshold, meaning it has never been used before. It's not defined. And leave it to Council, I guess, to see if they want to do anything about it. Personally I believe we should have clarified that. We took the chicken way out there.

Okay let's go to Number 8 on my agenda, which was Section 18.7 so if you have the document up, if you go to 18.7. This is for the chair of the IANA functions review team. Now you'll remember on the last call you were all very patient as we tried to figure out the selection of that chair. Should it be done by the people that got nominated from Council? Should it be handled by Council itself? Well, staff did a great job of verifying the way this works because the bylaws say that the GNSO names a cochair from among the six GNSO representatives that are nominated by GNSO stakeholder groups.

And that doesn't require Council to say anything. The groups themselves that nominate, as in the Registries and Registrars, those groups themselves don't leave Council to approve who their recommendations are for the CSC. However, it looks as if Council itself would select from among those six people the cochair representing the GNSO.

Okay so we're in Section 18.7. I want to make sure everyone's on the right section. It's in yellow. And I would recommend that we have the GNSO Council itself select the GNSO cochair from among the six GNSO reps using majority of each house. And I'll take a queue on that. So this is clarifying how we select the chair – the GNSO cochair on an IANA functions review team. Okay, looking for a queue. Go ahead, Steve Metalitz.

Steve Metalitz: Yes, thank you. Could you just clarify what the staff added to this since we last looked at this?

Steve DelBianco: Sure, Steve. I think what staff circulated right after we had the meeting they came up with a – let's see, cochairs and liaisons, they sent around – Julie Hedlund sent around an email. It was dated October the 5 where she gave us the expert where we had asked staff to clarify on the election of cochairs and liaisons. And we wanted 19.6 to be consistent with 18.7. And I believe it was you who pointed out we had two sections like this, the IFRT and the separation community working group, SCWG. And they both have very similar appointment sets and in both cases we're trying to be consistent and

we'll let Council select the cochair. So did you find that email from Julie, Steve?

Steve Metalitz: Yes, I did.

Steve DelBianco: Okay, fantastic. And anything else you want to add to that, Steve?

Steve Metalitz: I'm going to read the email. But go ahead.

Steve DelBianco: Beautiful. Yes. The essence of it is that once the stakeholder groups and constituencies and so on have picked our representatives that pool of representatives, one of those needs to be a cochair representing the GNSO on these two teams, the review team and the separation cross community working group. I want to be consistent and have Council select the GNSO cochair with a majority of each house.

I noticed, Julie, you didn't add anything. You just clarified by pasting from the bylaws and I appreciate that.

Steve Metalitz: Steve.

Steve DelBianco: Yes, Steve, go ahead.

Steve Metalitz: What I see here is – in this email is that for 19.5, it states that the – 19.6 – it states that the cochairs will be appointed by the – one cochair is appointed by the GNSO from one of the members appointed.

Steve DelBianco: That's right. That's right, so there's a cochair for GNSO and a cochair for ccNSO. Got that. We're not going to mess with the ccNSO.

Steve Metalitz: It does not appear that the same language appears in 18.7, right? Again, I'm just looking at Julie's email, I'm not looking at the actual...

Steve DelBianco: Okay. So the composition of the six representatives is different in 18.7 and 19.6. And you're asking about whether there's a designation of the cochair for GNSO?

Steve Metalitz: Yeah, there is in 19. That's her paragraph that starts, "Furthermore, 19.6 states," but...

Steve DelBianco: I think that Julie's excerpt was just an excerpt. If you look at the actual 18.7 one of the two IFRT cochairs is to be appointed by the GNSO from among the members appointed by the different stakeholder groups. So I believe that that excerpt doesn't cover the cochair section, which says, "By GNSO." Julie, do I have that right? And I realize you may have to be on mute.

Julie Hedlund: Yes, this is Julie. And fortunately it's not too noisy right at this moment. No, that's correct. I mean, I thought what I had tried to show was that there was consistency between the two sections. You know, by showing that in the excerpt of 19.5, you know, we – it's, you know, the representatives from the various SGs, and then same language in 18.7. You're right, I did not pull out the language in my email for the, you know, for the full sections but I think I have the full – I have the full – well the full section relating to SCWG in the accompanying document. I don't know if that's helpful or not and I'm not sure now if that's what you asked. But...

Steve DelBianco: No, simple question was does the chair – the cochair representing GNSO in both cases selected by GNSO for the IFRT and the SCWG. I believe the answer is yes.

Julie Hedlund: I think that's correct, Steve.

Steve DelBianco: Okay. And so to be consistent we could knock two of these out at one time by trying to be consistent and saying that after we've selected our six representatives from the GNSO on these two important teams, then of the six we would turn to Council to say, Council, here's a resolution and by a majority

of each house select which of these six would be the cochair representing GNSO on the respective review team.

So I'll take a queue on just that proposition which would knock out two items, 18.7 and 19.6. Steve Metalitz.

Steve Metalitz: That was an old hand actually. But I agree we should be consistent.

Steve DelBianco: Hey thanks, Steve. Is there anyone who objects to a majority of each house for the designation of the GNSO cochair on 19.6 and 18.7? I see no objections. Good, so we knocked two of them out with that one. I appreciate your patience.

Marika, before your chat scrolls off the screen, you're confirming what I said is that the word "majority of Council" is not defined anywhere. I believe you'd agree that majority of each house is not exactly the same thing. But you're agreeing with Amr in that given that the bylaws say that it's subject to the procedures of GNSO, that the GNSO procedures could clarify that the words "majority of GNSO Council" could be whatever GNSO wants it to be and it could do it in the procedures and it wouldn't have to be in the bylaws.

So I believe that Marika is agreeing with Amr. Okay, many of you are agreeing. And this gets back to what I had concluded earlier, I said it was the chicken way out, but nonetheless it looks like we could get away with it, where we would note that this was unique and not defined and go on to say the GNSO procedures could clarify how the majority of GNSO Council is to be determined. And I think you're all happy with that, right?

Marika, your hand is up. Did you want to add?

Marika Konings: Yes, thank you, Steve. This is Marika. Just to add at least as well that the specific, I think, addition of pursuant to – I'm trying to find the language I put myself in the – pursuant to each organization's procedures, I think at least at

this moment would lead to the interpretation of simple majority as is defined in the bylaws as well as the Operating Procedures of simple majority of each house.

And if I'm not mistaken, I think that is also how it was interpreted or applied in relation to the scope of the CSC membership. Again, maybe it's something we need to clarify but I just want to make – because I think that is how at least, not being a lawyer, I would currently read that language as we only indeed have a definition of simple majority of each house.

Steve DelBianco: No, you know, our point was not that. Our point was that if the bylaws say a simple majority of GNSO Council can we allow GNSO procedures to define how you get to a simple majority of GNSO Council. Amr was saying yes. And I thought you were backing him up.

Marika Konings: Well basically I think that I'm saying is that if you want it to be different than from simple majority of each house, which I think is the current definition or at least the only definition that exists of simple majority, if you think it needs to be different then indeed it would need to be specified.

Steve DelBianco: Yes.

Marika Konings: My interpretation, and again, I'm not a lawyer here, it would be following what is currently in the Operating Procedures and bylaws, which is only the simple majority of each house rule.

Steve DelBianco: Right, but I think you're a bit overstating it. Eleven dot three in the ICANN bylaws is where GNSO describes all of its thresholds. It does not define something called a majority of GNSO. It does not define that. It defines...

Marika Konings: Correct.

Steve DelBianco: ...the default threshold. So the default threshold does not necessarily mean that the GNSO procedures have defined what is majority of Council. But I think we solved this and so I guess we don't have to beat this one up anymore. I believe we've solved this one.

All right so that means we can pick up – Steve Metalitz, your hand is up. Did you want to go on? Go ahead.

Steve Metalitz: Yes, thank you. Yes, I'd just like the record to reflect and the notes to reflect that this group has now voted to say that if everybody in the left hand column of your chart that's on Page 5 of the report, votes one way and everybody below the line votes the other way, that that's not a simple majority of the council.

In other words, 13 out of 20 is not a simple majority according to this group because the – because, according to that theory, the Operating Procedures have repealed the mathematical law that says 13 is greater than 7.

Steve DelBianco: Yes.

Steve Metalitz: So I just would like that...

Steve DelBianco: Yes, I don't believe that's the case at all. I disagree, Steve. What this group is saying right now is that we'll leave the bylaws to say simple majority of GNSO Council. And then it will be up to us in our subsequent work, to recommend how the GNSO procedures reflect that. This group does not have an opinion about how GNSO procedures would define a simple majority of GNSO Council. It is not defined today and this group is not making the recommendation to define it yet. Amr didn't want to tie our hands. And I guess this is a battle we fight – live to fight another day.

Steve Metalitz: Well, I'll just ask the notes to reflect that 13 out of 20 is a simple majority.

Steve DelBianco: And it may well, I agree with you...

((Crosstalk))

Steve DelBianco: This is why I was identifying – yes, this is why I told Amr that you should not assume it's the same thing. Marika is saying that the GNSO procedures can define what the words "simple majority of Council" means. But we are going to point out in our report that this is a undefined, a unique definition that is not yet defined in GNSO procedures. It could be defined in procedures, but it was me who made the point earlier that if the GNSO procedures define a simple majority as requiring a majority of each house, that's going to be open to challenge.

Marika said that the door was open because the bylaws say that as determined by each AC and SO. And the words "as determined by" presumably allows the GNSO procedures to determine what we mean by a majority of Council.

And I don't agree with you, Marika, there's nothing in the GNSO procedures that says that a majority of Council equals a majority of each house. Instead, it's simple the default rule of 11.3. The default rule of 11.3 does not, by definition, define a majority of GNSO. It simply said here's the default rule for decisions that we make. So what I write this up it'll be identifying the ambiguity. Go ahead, Wolf-Ulrich.

Wolf-Ulrich Knoben: Thanks. Wolf-Ulrich speaking. Well, I don't want to start again with this discussion but, you know, I think we had a really a detailed process of, you know, development of the bylaws and this public comment and all of this. And everybody I think had a chance, well, to look at this. And, you know, was – so I can't remember that there was a specific discussion of discussing between the different parts, majority of the houses – of each house or the majority of the Council because everybody must have been of the opinion, okay, it's like it is at the time being.

At present as it's usually done and this is the majority of each house. So there is – this is a slight misinterpretation. And I would say or nobody really did care specifically why it was said, you know, in the bylaws right now a majority of Council. So I myself I would leave it as it is at the time being so for the – in the procedures and maybe if that is not – is necessary then that the Council or the GNSO – and we say we understand it as usual with a majority of each house. So otherwise we really stay in a conflict here. Thanks.

Steve DelBianco: Thanks, Wolf-Ulrich. In truth I believe we just missed this one because it's the only place in the entire bylaws where the words "simple majority of GNSO Council" shows up, and it's not defined anywhere else so I think we just missed it. That's all. And the Council has a default rule for passing a resolution today, it's called a majority of each house. That doesn't mean the Council defines majority of Council as majority of each house. It's just the default rule for how they pass resolutions that are not related to policy.

Okay, so we're going to do what everyone agreed to earlier on the call, which is to note that this is unique and undefined and it would be up to the GNSO procedures to define what it means to achieve a majority of GNSO Council. Let's keep this in context. This is only with respect to approving the charter change for the CSC, the Customer Standing Committee, a charter change. And the GNSO is one of the bodies that gets to weigh in on a charter change.

All right, let's move. If you go back to our wide report, our long map, I'll bet if we're diligent we're going to be able to get through this. On the call we ended up – so we've just caught up ourselves so we're going to go to Page 16, 22.8, Section 22.8 on Page 16. I'll give you all a moment to get there, 22.8. There's a little marker in the document where I said, "stopped here on the fifth of October call."

Okay so this is the independent investigation. And the GNSO rep on the empowered community will have to signal their decision. And the bylaws say

it's pursuant to the procedures of each of the ACs and SOs so our recommendation to be consistent with everything else you said is the GNSO's rep on the EC acts in accord with instructions from Council and those instructions are approved in Council by a majority of each house. We're on 22.8. Are there any objection to 22.8 on a majority of each house? And I appreciate that several of you read a lot of this ahead of time and came up with it. I really appreciate that very much.

So let's go to 25.2, 25.2, which is a fundamental bylaw. And here we're going to need to make a decision, is this a fundamental bylaw or a change to the articles of incorporation. And it requires approval by 3/4 vote of the directors and the approval of the EC. And that approval threshold is set forth in this section as well. The question is what is the EC rep say for GNSO?

Does the EC rep vote according to a majority of each house or a super majority? Over the weekend Darcy and Wolf-Ulrich had said super majority was the appropriate threshold. You'll see this reflected in the table. And I think Ed Morris was arguing that this fundamental bylaw, I think you agreed, Ed Morris. Ed, would you clarify? Thank you, Ed.

So three of you came in over the weekend to say this ought to be a super majority. And so we need to quickly make this decision. Do we want a super majority or majority of each house to change a fundamental bylaw or articles of incorporation? And this is only the EC's decision on behalf of the GNSO. Remember that the rest of the EC has to meet the threshold of decision making. We alone can't change a fundamental bylaw or an article of incorporation.

Okay, I think we have a consensus on this one. It should be super majority. Before I move on, just to confirm, super majority. And that was on 22.8. Sorry, 25.2, super majority.

Okay then let's move on to 26a, which is consummating a transaction like selling assets, the asset sale transaction. This was also a discussion over the weekend about whether that would be super majority or not. And I think we have Darcy, Wolf-Ulrich, and Ed Morris all suggesting super majority on this. Are there any disagreements that super majority is the right threshold for 26a?

Ed Morris, please, go ahead.

Ed Morris: Thanks, Steve. Yes, I'll go along with super majority but just in case anyone else feels the same way I do, I'd actually rather have a threshold of unanimity. That's because this is winding up the corporation, and I'm not sure that even a super majority is a high enough threshold for me to want to be able to go along with the GNSO supporting winding up the corporation if, for example, you have just one stakeholder group that's opposed to winding up the corporation I actually want to accede to them.

So my preference would be unanimity but if nobody – which would be full consensus, but if nobody wants to go to that step you can record me in favor of super majority. But I think I'd at least throw it out there as an option.
Thanks.

Steve DelBianco: Thank you, Ed. By the way, full consensus is not defined as unanimity in any of the procedures that we use. But unanimity is a rather...

((Crosstalk))

Ed Morris: I'm sorry, Steve, what do we call what we used to use in the SCI, which is basically everyone had to agree for this to go forward, I believe, or Amr could...

((Crosstalk))

Steve DelBianco: Yes, I mean, I'll ask staff to put it up because we're operating under the GNSO rules for what full consensus is and it's full consensus I don't believe is unanimity but I'll leave that to others to check. But personally, Ed, I wouldn't want to require unanimity for anything, and let me explain why.

We had a principle in the CCWG of not allowing one party to block the community's will. It's one of the reasons that it required at least two of the empowered community participants to block moving ahead with the decision. We're going to make sure that no one party could block. If we require unanimity on this, it would mean that a single party, the GNSO, would be sufficient to block GNSO's decision on the empowered community.

And Amr is putting into the chat what he believes the word "full consensus" is in the GNSO Operating Procedures. But regardless of how it's defined, okay, what is the preference of this group? Do we want a super majority or unanimity, so we're clear, on the GNSO's decision to inform our rep on the empowered community about an asset sale, a dissolution?

So we have GNSO super majority versus unanimity. Let me ask other than Ed, are there other members of this group who would prefer unanimity for this decision? And, Ed, if you'd like to speak to it and sell it hard by all means, go ahead.

Ed Morris: Thanks, Steve. Yes, I mean, to me, look, I'm trying to look for a threshold by which, yes, one stakeholder group would be able to shut this down. That's because this eliminating ICANN the corporation and if there's not close to absolute unanimity I'm not sure we want to support that to go that route. It's just too big of a decision. It's the elimination of the company itself.

And if we recall on the CCWG back when we were in the pushing for membership and we were obviously doing that together, the principle objection of the board, or at least the one they threw out there, was we don't want to give you the power or anyone the power to shut the company down.

But I'm not seeing the support for anything above super majority and so I guess I'm willing to cast a vote for super majority just so we can get consensus on this going forward. Thanks.

Steve DelBianco: Thank you, Ed. I appreciate that. That's thoughtful. I appreciate that. So we'll go with GNSO super majority. So Steve Metalitz has put something lengthy in the chat. Do we need to address that right now, Steve?

Steve Metalitz: No, I'd just like that reflected in the record. Thanks.

Steve DelBianco: Excellent. Thank you. Appreciate that. Yes, and you're right, I agree with the way you wrote it in the last line is that we're leaving it undefined. But we're going to be responsible by identifying the words of GNSO simple majority is not defined.

All right, so let's move on. We're going to go with super majority. And thank you, Ed, for deferring on that one. We're now up to Annex D. And this is the last part we have to deal with is Annex D. And I know there are several pages left, many of them are very long pages with a single item.

Let me give you an example, if you go to Page 17 of our table, the very first item on Annex D has a notification in the bylaws meaning that the GNSO is going to be notified, but there is nothing about the GNSO making a decision in the first section, 1.2. So I don't believe there's anything we need to do in 1.2.

When you get to 1.3, which is the approval action, this has to do with should we convene a forum to discuss an action? Could we define a forum? And I believe on 1.3 the GNSO rep will decide whether ICANN moves to a community forum in according with instructions by a majority of each house. So 1.3, majority of each house, any objections?

You've all had a chance to read this over the weekend so we'll probably be able to briskly get through these. Good, so we're good on 1.3. Now 1.3b doesn't require any decision, it requires a notification but for the absence of doubt, if a decision were required about when to schedule the forum, what time, what day, if a decision like that comes up and the EC needs to make a decision, the EC rep acts in accord with instructions approved by the majority of each house. Any objections to that in 1.3b?

Steve Metalitz, please.

Steve Metalitz: Yes, I'd just like to say that my constituency supports a super majority test for instructions to the representative to the empowered community. So I'm not going to raise this on each point but that's our position. Thank you.

Steve DelBianco: Okay, so Steve Metalitz, we'll note in the notes that Steve Metalitz says that the IPC recommends GNSO super majority for any resolution instructing the EC rep from GNSO on any matter. Do I have that right?

Steve Metalitz: Yes, that's correct.

Steve DelBianco: Okay so for any decision. Thank you. We'll make sure that's in the report as well. All right moving on to 1.3f, 1.3f, this is delivering to the EC administration views on the approval action. Any time that the GNSO's EC rep delivers its views on an approval action on whether to hold a community forum and when they would act with the majority of each house. And this is consistent with most of the report that we've done so far on the EC rep and how they act.

Other than Steve Metalitz's noted exemption – noted exception, I believe this group would support majority of each house for that. Good, let's go to 1.3i which is about whether to hold additional community forums, whether to hold additional community forums and the EC administration gets to make that at its discretion. But we want the GNSO rep on the EC to act on instructions that

were approved in a resolution before Council by a majority of each house.
Any objections to that on 1.3i?

Great, seeing none we'll move on to 1.3 – 1.4. this is a decision of whether to approve an approval action on fundamental bylaws articles of incorporation and asset sales. And the GNSO rep in here on the EC would act in accord with the instructions approved by majority of each house or a super majority. And this was the – and I'm going to ask staff to clarify but it's my belief that at this point this is a – you've reached the end of the process of the empowered community and it's trying to make its final decision on these three items.

And these are important items, the fundamental bylaws the articles of incorporation and asset sales. The question for all of you is do we want that to be a majority of each house or a GNSO super majority? I'll take a queue on that. Darcy, please.

Darcy Southwell: Thanks, Steve. It's Darcy. I mean, if those are the type of things that it's going to be deciding I would suggest a super majority. It's consistent with what we've decided before.

Steve DelBianco: Thank you, Darcy. So this is – we are in Section whether to approve an approval action on 1.4. We are in 1.4 and I'll ask staff to just double check does 1.4 cover only fundamental bylaws, articles of incorporation and asset sales? Bring up your handy copy of the ICANN bylaws. Annex D, 1.4, looking for clarification or a little help from staff on this, 1.4.

There's a hyperlink to the brand new bylaws. You can all bring that up on your browsers. Annex D.

Julie Hedlund: The is Julie...

Steve DelBianco: Julie Hedlund, please, go right ahead.

Julie Hedlund: Yes, I'm just trying to open up my copy of the bylaws. I didn't have it open right at the moment. Just to look at that section. I mean, based on what's here in front of us that would appear to be exactly what this is. That it is on the amendments to the bylaws and to the – and the asset sales. But...

((Crosstalk))

Steve DelBianco: All right, let's take our time and get this right, this is important, so we're all looking at Annex D, 1.4, to determine if – whether to approve an approval action. I'm looking at it now. And there is a distinction in the bylaws on approval actions related to fundamental bylaws, articles of incorporation amendments, and those have higher thresholds. And if we want to make a recommendation that the GNSO's rep on the EC needs a super majority to get to the final approval action on asset sales, articles of incorporation and fundamental bylaws, that would be consistent with what we said a little bit earlier.

Darcy has indicated her views on that. Anyone else want to weigh in? Julie, your hand is still up.

Julie Hedlund: Sorry, old hand.

Steve DelBianco: Okay. Darcy, you're suggesting GNSO super majority for the EC rep act on a final approval action for fundamental bylaw amendments, articles of incorporation for ICANN and asset sales. Any objections to GNSO super majority on that? Steve Metalitz, I'll wait for you to finish typing and then we'll move on or you can speak.

((Crosstalk))

Steve Metalitz: I agree with super majority on that.

Steve DelBianco: Thank you, Steve. I appreciate that. All right, everyone, let's move to the next one. We just finished 1.4. Now we're into Article 2, procedure for the exercise of the EC rights to reject a specific action. The GNSO rep has to make these decisions about moving ahead on a rejection action. This rejection would be a rejection to a change in the bylaws or to reject a budget.

So when this petition is there and they ask the EC who else in the EC supports moving ahead with the petition, would this be a majority of each house in Council? That's what we have in the table right now as our default rule. In the petition process. And you'll see that it steps through a couple of different procedures.

Is there anyone who believes we should go higher than the majority of each house in Section 2 – 2.2? For a queue if I don't see a queue we will go with a majority of each house on matters related to wanting to reject a bylaw or reject a budget. And that goes for 2.1 – sorry, 2.2b and as you move ahead to 2.2d, it's the same thing, you're just moving ahead in the decision process. And whether to hold a forum is 2.3a.

Whether and when to hold the forum is majority of each house. And then let me draw your attention to 2.3h so if the rejection action participants they agree at some point that the issue we had with rejecting the budget or bylaw has been resolved and they want to withdraw their petition, the question is how do we, in the GNSO, instruct our rep on whether to withdraw it?

In the table I have written in there GNSO super majority, but that's just for the purpose of getting our discussion going. We're on 2.3h in Annex D. Wolf-Ulrich, please.

Wolf-Ulrich Knoben: Yes, thanks Steve. Well, I put a question mark here so it was not clear for me why in this context, you know, you make this distinction between here when it comes to the rejection of this (petition) planning to uplift or to

upgrade, you know, the vote to a super majority. It was not clear because of all the other actions before, just for – by majority of each house. So...

((Crosstalk))

Steve DelBianco: All right, I'll explain. It was because of the progression. The GNSO rep on the EC is making decisions about whether to allow something to progress through community forum, whether to support a petition. But there comes a point in the ultimate decision where the empowered community says yes, we're going to reject this bylaw or we're not. And there's a point when the parties who brought the petition will say, look, this thing has been resolved.

So the decision to say yes we agree it's been resolved is a final decision. So we could suggest that a final decision in the empowered community from the GNSO could require super majority. But again, I'm happy to go with the will of the group as to whether a majority of each house. It's only because of its finality, Wolf-Ulrich, that you would consider something higher than a majority of each house. And again, we're on 2.3h.

I'll – Amr, I guess I'm asking you whether you think it should be super majority or majority of each house, whether it's rejecting or resolving. Ed Morris please.

Ed Morris: Yes, hi, Steve. I just want to actually ditto what Wolf-Ulrich just said. I see no reason for this to be higher than the majority of each house threshold. Thanks.

Steve DelBianco: Okay. Are there any objections to using majority of each house on 2.3h, which is allowing the withdrawal of a petition? So we're going with majority of each house, not simple majority, Amr, but the majority of each house because it doesn't say simple majority in the bylaws. Okay. Ed Morris hand is still up.

Okay, thank you. Let's go to 2.3i, so now there's a community forum considering this community – any one or two of them. They want a rejection action, community forum. And I believe that this is deciding whether to hold another forum. The decision to hold another forum is like the decision whether to hold the first forum and we think that should be made by the majority of each house instructing our rep. Any objections on 2.3i? Great, thank you.

Two point four, we've gotten to the point on whether to reject a rejection action. So a couple of decisional participants want to reject an ICANN budget. We finished the entire community forum period, we've gotten to the end of the rope. If it's a rejection item, should it be super majority or a majority of each house? And we had reserved super majority earlier for the empowered community decisions on fundamental bylaws articles of incorporation, dissolving the corporation. The question here is do we want a super majority on the final decision?

To be consistent, if we allowed parties to withdraw on a simple majority, it would seem that we would allow GNSO to approve or reject by a majority of each house. So we're at Item A under 2.4, simple majority of each house. Are we good with that? Steve Metalitz, please.

Steve Metalitz: My question was isn't this 2.4 kind of the mirror image of 1.4 where we went with a super majority? That one was approval of an approval action and this is rejection of a rejection action. And I'm not...

((Crosstalk))

Steve DelBianco: Steve, the difference – right, the difference is what the subject matter is. In 1.4, the subject matter was deemed to be the magnitude of a fundamental bylaw, the articles of incorporation for ICANN itself and the asset sales. And the distinction made here is these are a rejection of a regular bylaw or the rejection of an ICANN budget. So that subject matter is begin deemed at

least by this group to be of a different nature and not require GNSO super majority but just a majority of each house. I hope I've explained that appropriately.

Steve Metalitz: Yes, that's helpful, thank you.

Steve DelBianco: Okay so a majority of each house looks like to be the consensus here. And I note that the IPC would say that any decision of the EC's rep from the GNSO would require a super majority. We'll reflect that everywhere that this is not unanimous by any means.

All right great, thanks, everyone. That was 2.3. Now we go to Article 3. Article 3 in Annex D is about removing directors and recalling the whole board. Okay? On this one we have a choice, do we go with majority of each house or a super majority? Over the weekend Wolf-Ulrich made the case that eliminating a director, this is not all, this is a director, eliminating a director the GNSO rep on the EC would act in accord with super majority as opposed to majority of each house.

So we need to discuss this. I'll look for a queue. We are on 3.1a, the removal of a single director. Go ahead, Wolf-Ulrich.

Wolf-Ulrich Knoblen: Yes, thanks, Steve. Well, just before the meeting, well, I sent also today an email so because we had a discussion on the list Ed was saying something with regards to that – to the removal of directors and I was responding to that. So I would say, you know, I see a distinction between these different cases, a board director from the NomComm and a board director from the SO ACs appointed.

And I was saying, okay, I could accept what Ed was saying with regard to the NomComm appointed director. And that the level shouldn't be that high of a super majority. So I could accept a majority of both houses in this case.

However, so that is just the first one, if it goes then to the others and I will come back with some words. Thanks.

Steve DelBianco: Okay. Yes, to put this in context in Article 3, sorry, Annex D, Article 3, we're going to cover three successive decisions. The first is the removal of the NomComm director; the second is the removal of any AC and SO director; and the third is the removal of all directors. And in rapid succession in the next few minutes we're going to address each of those.

And so I know this group likes to be consistent, but there is an escalating seriousness to get from let's say dump the NomComm director versus dump ccNSO's director or dump the entire board. It would strike me that if you put that on a spectrum we might well go with the GNSO super majority to spill the whole board, that's coming up on two pages now. The question is should we require just a majority of each house for the GNSO's decision on spilling the NomComm director, a NomComm director or a AC/SO director?

Darcy.

Darcy Southwell: Thanks, Steve. It's Darcy. Actually that was going to – that was what I was thinking in my head that just the NomComm director or an SO or AC director could be majority of each house but all directors I think really have to be a super majority.

Steve DelBianco: With regard to all directors, let's try to make the easiest decision first. Would there be any objection from this drafting team on requiring a GNSO super majority for the spilling of all directors? Any objection to saying that you spill all directors, the GNSO Council has the super majority to make that call? I don't see any disagreement with that. And I realize it's a little lower in the table but I just wanted to put it out there as a bookend.

This is actually the board recall process on all directors, which is 3.3a. So 3.3a we're going to go with super majority; on 3.3a we're going to with super

majority. The staff notes can reflect that and double check. I'm making updates to the document as we go that we'll be able to check that that was 3.3a. The 2.2 and 3.1 deal with the removal of a director from the NomComm and the removal of a director from an AC and SO. Question now for you is, okay, Amr, I will note that for spilling the entire board Amr was suggesting – well he used the word “simple majority” I think he meant majority of each house but I don't know.

Amr, why don't you clarify so that the notes can reflect that?

Amr Elsadr: Yes, thanks Steve. This is Amr. Yes, that is correct, I mean a simple majority of each house for spilling the board.

Steve DelBianco: Okay.

Amr Elsadr: And if I'm not mistaken, and as I believe Ed has pointed out previously, the GNSO has to act in concert with other SOs and ACs in this so taking that into consideration I wouldn't want to raise the threshold too high within the GNSO to make this decision. Thank you.

Steve DelBianco: Yes, that's a good notion. And you and Ed are right, virtually all the empowered community powers require the cooperation and agreement of other members of the empowered community. We can do nothing alone in any of these, any of these empowered community powers. So I will note that all but Amr thought that a super majority in GNSO was necessary for spilling the entire board. But we do need to make our decision on the NomComm director, removing a NomComm director and removing an SO AC director.

I'm hearing a busy signal. Thank you for clearing that up. So under 3.1a, removing a NomComm director, I'm going to bet that Amr would say majority of each house because he was willing to say that for all. And I'm willing to say that Ed would go with majority of each house. So I'll just say – I'll say that is the default here.

So for the removal of a NomComm director when the empowered community says to the GNSO, what say you – thanks, Ed – it's my belief that this drafting team has a consensus to go with a majority of each house. Do I have that right? Any disagreement? Thank you, everyone.

And now apply the same thinking to 3.2a, which is the removal of AC SO director. Wolf-Ulrich, over the weekend, you had been suggesting this goes super majority. We've done that for spilling all directors. But what about an AC SO director? Wolf-Ulrich, do you want to make that case on this call?

Wolf-Ulrich Knoben: Yes, if I may.

Steve DelBianco: Oh, I'm sorry, we have a queue already and I missed it so, Steve Metalitz, Ed, and then you, Wolf-Ulrich. Go ahead, Steve.

Steve Metalitz: Thank you. Two points. First, just to reflect the IPC position that instructing the decisional participant even in the 3.1 situation should require a super majority. Second, I'm – it's really a factual question, these two – in 3.2 we're talking about the two directors that are chosen by the GNSO and in practice that really kind of works out to each house choosing a – excuse me – a board member.

I don't recall the exact – I know that one house has the monopoly on making a nomination. Maybe the staff can remind us what the vote is to actually select these people. But there probably ought to be some kind of symmetry between what we now have for selecting these two directors and what we have for joining, you know, for acting to remove them. So maybe we can be advised own that the current procedure is for selecting these. Thanks.

Steve DelBianco: Thank you, Steve. While you're looking into that let me remind everyone to check under Annex D, 3.2a and you'll see that the procedure to remove a GNSO director is a procedure that goes to the GNSO. If a decisional

participant or an individual makes a petition the petition goes to the AC or SO that named the director because they're petitioning to the GNSO to say please remove this director.

And that petition that is a 21 day period. The decisional participant and the bylaws are quite extensive with the procedure that they go through including a dialogue and ultimately it would result in the decision with the GNSO rep. When the GNSO rep is instructed on how to respond to the fact that the other - some other member of the empowered community is asking for removal what would the GNSO's level be?

And Steve Metalitz is trying to suggest that our decision about what to say when somebody wants to remove one of our directors ought to be the same threshold we used when we actually nominate director. And Marika has put into the chat the current bylaws indicate that the GNSO there's a nomination to fill the two seats. And the way they do it today is that each of our houses makes a nomination. And then that nomination of the house has to win 60% of the members of that house.

So Steve Metalitz your question was answered by Marika that if we wanted to be consistent we could paste that entire section of thresholds and suggest that it depends on which member of the GNSO Board was being removed. That only that house would react to a petition to take that rep - to take that director off. Ed Morris, please?

Ed Morris: Yes, hi Steve. I think that - the mirror image is a good idea that we - the appointing house would have to want to remove the director with a 60% vote. I think that makes sense.

Steve DelBianco: And then Ed, Steve Metalitz dived into 3.2. And the bylaws tried to be more prescriptive about this to go with a 3/4 majority. And the word 3/4 majority I don't believe is defined anywhere in the current ICANN bylaws with respect to the GNSO voting thresholds right? We have many different thresholds for

things like PDPs. And we have a default threshold but I don't believe we have ever seen a 3/4 majority. So this is one of those undefined thresholds. It fits in with what we started the call on when we said we don't have a defined threshold for a majority of GNSO.

Now if it's 3/4 of GNSO I don't know that, that really works if it's the contract party houses board member versus the noncontract boarding houses board member. There seems to be a threat on this call that only the house designating that member would have something to say versus all of council. But the bylaws seem to be a little more explicit in requiring a 3/4 vote of GNSO. Next person in the queue please. Ed Morris your hand is still up. Did your - to yield to Wolf-Ulrich and we'll come back to you?

Wolf-Ulrich Knoben: Yes, thanks Steve. Well I just understood there is a direct I was thinking as you already know to give the respective house, you know, a little bit more weight, you know, in removing or in petitioning for the removal of its board member. But I would like to be clear, you know, because as the board members are supposed to be board members for the overall community not just for our house for one house, you know? So the question for me is really is that from a legal point of view is that okay to do so right now? So or shouldn't be the council have a say at all? But then, you know, maybe the - it could be done with the super majority of the prospective house for example, you know, if that occurs then it may happen or in a different shaping. But for me it's really the question is that from a legal point okay that just one house is not positioned well to remove a director. Thanks.

Steve DelBianco: Okay. Ed Morris did you want to come back in on that? All right so Steve Metalitz the last sentence of Section 3.2 -- so you can all bring up your section of the bylaws -- I'm in the last section of 3.2 where did you see 3/4 which section is that?

Steve Metalitz: I'm looking at 32F. I'm looking on our chart. I'm not looking at the actual bylaws. But it's on Page 26 of the chart.

Steve DelBianco: Thank you. So that's 3.2F.

Steve Metalitz: Yes.

Steve DelBianco: Yes. And of course the chart is an excerpt of the actual bylaws that's why it's handy to cross reference back and forth. And I'm looking in 3.2F right now 3/4 majority. So the - the full sentence in the actual bylaws is following the expiration of the comment period then the applicable decisional participant informs the EC whether they have support for that removal petition within the applicable - 3/4 majority is determined pursuant to the internal procedures of the applicable AC and SO.

So Steve's right in that the bylaws talk about a 3/4 vote being necessary for that removal. And the way the bylaw is written it does not signify by house. And the indication here is just like we came up with earlier it does not make a - so Amr I'm referring you to the bylaws in 3.2F because the 3/4 threshold has not been used before but it is in the bylaws here. So we're going to definitely want to note that on 3.2F that, that 3/4 GNSO threshold is undefined and it does not clarify that it's by house.

So what is this group's preference about whether GNSO in total reaches 3/4 or does the house itself that named the director have full control over responding to the petition? I don't think you should assume that only the house that named the director gets the vote since that is the director that represents all of GNSO and in fact is supposed to serve the interests of the global community. So if it was the director from the contract parties wouldn't the noncontract party house want to weigh in on the decision as to whether they are removed? Let's take a queue on that. Do we want this to be house specific or council wide? Go ahead Wolf-Ulrich.

Wolf-Ulrich Knoben: Thanks Steve. Well I'm in favor of doing it council wide. But then the 3/4 threshold for the whole council would be too high for me. So I was suggesting

but whether it could be possible to either have a voting with majority of each house or a super majority on the respective house with, you know, a lower voting threshold of the other house below the majority. So that's what I was suggesting to give this house a little bit more weight. That's my position.

Steve DelBianco: Thank you Wolf-Ulrich. There is a slight dilemma here in that it says in the bylaws 3/4 majority of the GNSO. We can probably in our procedures define whether that's by house or overall. But I don't think we have the liberty to completely redefine what 3/4 majority means by coming up with something other than 3/4. We can have at least 3/4 of each house perhaps or 3/4 of the total council but anything else would mean we'd have to go back in and change this particular bylaw. Amr?

Amr Elsadr: Hi. Thanks Steve. This is Amr. And just wanted to also note that I agree with your last comment we have to either provide a recommendation that is consistent with the 3/4 threshold which as you noted does not current - is not currently being used in anyway and is not defined. But I also wanted to add that I believe because these directors are appointed by each of the respected houses in the GNSO I believe that whatever threshold we do come up with and we may need to do a recommendation that creates a new threshold that the threshold should require a minimum of 60% of each house to agree to this. And this is the same threshold that is used to appoint a director by each of the houses. So I'm just saying this to give each house a sort of weight in the decision because the house appointed the director in the first place. And I believe the same level of consensus within the house should be there to agree to removing him or her. Thank you.

Steve DelBianco: Amr before we move to Darcy I do want to note that the bylaws that were approved that came out of the entire community process for the CCWG said 3/4. So just changing it to 60% is a much bigger deal than simply defining how we get to 3/4 whether it's by house or by total. So both you and Wolf-Ulrich are suggesting something that is a very significant change that means we have to change something that was defined there. Go ahead Darcy.

Amr Elsadr: Sorry Steve. Steve if I could come back to that real quick I apologize...

Steve DelBianco: Sure, sure

Amr Elsadr: ...if I'm unclear. I wasn't recommending that we lower the 3/4 threshold. I was recommending that when we design the threshold that's within the 3/4 that 60% of the house should agree. So 3/4 for example could be one whole house and 50% of the other one. So that's what I'm saying we shouldn't do. We should require that at least 60% of each house within the larger the broader 3/4 threshold should also agree. Is that clear or am I still...

Steve DelBianco: I think so. I think it's clear and yet it's going to be very difficult for this group to come up with a recommendation. Before I turn to Darcy and Ed I – where I'm leaning on this when it's the same way we handled the word simple majority of GNSO council at the beginning of this call where we would note that this was a unique and undefined. And suggest that GNSO procedures could define how one meets the word simple majority and how one meets the word 3/4 majority. And I don't know whether we're going to get to a rule on this call. Go ahead Darcy.

Darcy Southwell: Thanks Steve, it's Darcy. Similar to what Amr said in some respects I mean I do think we should give some deference to the house that not deference but the house that elected this director should definitely need to be in agreement on this decision. I don't know how to best fit that in, in the 3/4. It's interesting to me that this is where they've actually made a, you know, they've put an actual number in the bylaws for us that's a little bit inconsistent with other things that they've written. But I think it's important that the house that elected that director definitely may be the majority of the 3/4 at a minimum rather than the other way around. Does that make sense?

Steve DelBianco: Well I would suggest to you that since it says 3/4 we could suggest that 3/4 applies to the house that nominated the director. And the question would be

do we consider at all the opinion of the other house? That would be another way for you to respond to it. I mean the 3/4 would apply to the house that nominated the person but what about the other house? Do they have anything to say? Go ahead Ed Morris.

Ed Morris: Steve, yes this is a problem. I think on the CCWG we screwed up on a few areas at least and this is one of them. I don't see how we meet this outside of giving a 3/4 of one house or 3/4 of the entire council which is of course undefined in our current rules. I just think at this point hearing what Darcy is saying and hearing what Amr is saying deference to the house the only way I sense we could do that is to just make it 3/4 of the appointing house.

And that eliminates in some ways that eliminates the problem of the houses by just locating it within one house itself. And it also meets the concern of again Amr and Darcy that the house has the appointing house has the majority of input here. And although ideally we'd probably want to include inputs from the other house I'm not sure we can do it in a rational scheme and still meet the bylaw requirements. So I would be in favor of 3/4 of the appointing house.

Steve DelBianco: Now Ed to clarify that was 3/4 of the appointing house and no voice for the non-appointing house. Do I have that right?

Ed Morris: Yes, yes.

Steve DelBianco: Okay. I'm trying to figure out whether we have enough of a consensus to move ahead on this one or not. So I'll ask how many believe that it's sufficient to just do 3/4 of the nominating house and no threshold from the other house? How many believe it's a single house that the nominating house alone have to get to the 3/4? And you can either put your hand up or check the red box. How many believe 3/4 of just one house?

And I don't agree Amr. I mean we could define it. But the nominating committee the nominating house is where the 3/4 would live. So I have Ed and Darcy who think it's just a single house. Okay we can clear those agrees. So two say it's one house and then how many believe it's 3/4 of each house? And the third question I'll ask is 3/4 quarters of council? So how many say it's 3/4 of each house? Do I have any yeses on each house? I have none on that. How many believe we should have 3/4 of council without respect to house? Okay I have no votes on that. So we do not have anything close to majority on this one. So we are only going to note that 3/4 is not defined and we do not have an answer. It's a little bit of a chicken way out. We can say that we pointed out the fact that 3/4 is not defined but that this group doesn't have a recommendation for how council's procedures would determine the 3/4 threshold.

All right we have 14 minutes left and a lot of things to cover so I'm going to try to move on. I think we're nearly done with our document. That was under 3.2 everyone. So if we scroll below 3.2 we get all the way down to the full board recall. And we've already covered that. That was GNSO super majority well done.

And you go all the way down to Section 4 which is the initiation of the mediation. And the initiation of these discussions seems to me to reach a threshold where a majority of each house ought to be sufficient. And that was 4.1. Are there any objections to using majority of each house for 4.1?

Fantastic let's go to the next one which is 4.2, 4.2 on the table is having a community driven IRP because after the mediation proceeds we get to the next step where the empowered community is allowed to have an empowered community IRP proceeding and under that ICANN pays the legal fees of a remarkable new power we've got. So the question is what is the ECs when the EC turns to the GNSO and the GNSO rep says yes we want to proceed with the community IRP? It would be my understanding that this group believes that that's the majority of each house is sufficient for the

GNSO to weigh in, a majority of each house. Are there any objections to majority of each house for this one? Go ahead Steve Metalitz.

Steve Metalitz: Yes I just point out this is parallel to the one we're at the very top of the document where we bifurcated it between - because there are two decisions in this section. One is does the GNSO want to do this and the other is how does the GNSO as one of the decisional participants react when another decisional participant wants to do this? So I would just point out we probably should maintain that consistency.

Steve DelBianco: Steve the - in the nature of consistency please recall though that the community based IRP is one where ICANN pays the legal fees. And that is the case for the previous one.

Steve Metalitz: Okay.

Steve DelBianco: So there is one remarkable difference on this because we've often believed that the cost of an IRP has been a barrier to its use. And it's one of the reasons we wanted to be sure that the community would not be stopped by cost if it wanted to launch an IRP. All right so in the draft document we have a simple majority of each house for the ECs consideration of whether to do a community IRP. Are there any objections to the majority of each house? And I note that the IPC across the board looks at the EC rep should always work only on a super majority.

Okay so we're going to go with simple majority on that. And we're in really good shape on timing here because as I pull down on this table you have to go all the way to 4.3 which is a community reconsideration request which is a - that the EC do a reconsideration. Earlier we just covered the EC doing an IRP but there's also whether the EC does a reconsideration.

And here's the good news this is the last item in our table. What I have for the default is that the GNSOs rep on the empowered community would vote

according to the instructions approved by a majority of each house about whether to reconsider a decision. So it's a lower - sorry it's a less of a dire consequence than an IRP but it's in the same vein, a reconsideration are there any objections to using majority of each house on that one?

Okay fantastic. We've made it through the table and we only have two open items which was the definition of simple majority and the definition of 3/4 of the GNSO. We're going to note those two definitions that this group does not have a consensus or a majority on how to define that. And we're going to be leaving that for further discussion either within council or part of the GNSO procedures.

Now I'd like to turn to the report the draft report. I'm very grateful that I got some edits and some comments from Matthew, Ed and Farzi (unintelligible). I did want to note that I have a strong I have a strongly held opinion and a request for all of you that you allow us in our report to reflect how we considered alternative ways of who speaks for GNSO, capture that we were open to those views to capture the dialogue of what majority decided to proceed yes council speaks for the GNSO. I want to keep in there the story that we considered voting methods other than this majority of each house and that those were not accepted by the majority.

And that story travel log I believe it was either Ed or Matthew called it a travel log that, that's an essential part of our report. It is not the same thing as a minority report. At the same time a number of you have said don't make our readers work so hard to get to the conclusion. And you're right. That's a fair point and I will happily move the page the conclusion with its reference to this long table I would happily move that to the very top of our draft report and then follow it with a discussion of what we considered and how we moved through to get to a majority view.

And remember we are going probably only come up with six or nine supporting where we came out. And I'm grateful to the fact that those of you

who didn't want council to represent were still willing to go along and help us to define what the appropriate thresholds are. So we've done, you know, double the work on this and I appreciate that. So if we - I would propose to restructure the report by moving the recommendations to the beginning but retaining the description of how we considered other views and decided to move past them. So in the minutes that remain I'd like to take a queue on your views on this - on the draft report. Ed Morris, you're first.

Ed Morris: Hi, thanks Steve. First to go back a little bit and I realize we're pressed for time. I do note in the chat that I think we do have a majority for removing the SO AC director by maybe only a five person majority by 3/4 of the single house. I note that Amr, Matthew, and Farzi have joined Darcy and myself so that could be reflected in the vote total. We were moving a little bit fast.

In terms of the report yes I mean my principal concern was making sure we had the recommendations up front. And I - being a councilor I mean Amr and Wolf-Ulrich I'm sure read every word of ever report that comes by our desk. I'm going to admit it I don't. I speed read a lot of it. And so it would be very helpful to me and folks like me that perhaps aren't as conscientious despite our best efforts to read every word of ever report to hold the actual recommendations both in terms of the who, and the what and the how and put them up front.

And then if you want to do what I call the travel log that's fine as long as folks agree on the content. But my principal point was let's get the recommendation up front so the councilors who are quite busy people who aren't only going to have a few days to look at this are able to take a look at the recommendations first and the level of support for each one of the recommendations and then move on to the travel log if they want to do so.
Thanks.

Steve DelBianco: Thank you Ed. And pursuant to that on the draft report would keep the first four paragraphs then insert the recommendations. And then move everything

else to the documentation for how decisions and alternatives were considered. And we're going to need - we only have five more minutes so let's go to Matthew Shears. But I would like to come back to this question on whether it's 3/4 of the nominating house? We do in fact have five in support of that. I want to see whether it's any deeper than that. Go ahead Matthew Shears.

Matthew Shears: Yes Steve, thanks. I was just – I agree that we need to move the recommendations up front of everything else. I just think in the travel log path we probably can be a little bit more succinct. I understand it's important to show how we got there and the discussions that were had. But I think there are parts of those suggested where we probably could be a little bit more concise. And I think that will help with regards to people following the travel log which is important. Thanks.

Steve DelBianco: I will make an attempt to limit that a little bit more and circulate another draft today reflecting the conclusions. Let's see if we do have the an indication of is it five of you I believe Farzi, Amr, Darcy, Ed and Matthew believe that the removal of the GNSO director would be done by 3/4 majority like the bylaw says but the GNSO procedures would define it 3/4 majority only of the house that nominated that individual and the other house has no - nothing to say about it. So if I have it right five of you believe that's the threshold to how to define 3/4 quarters. So first clarify is that what Farzi, Amr, Darcy, Ed and Matthew were saying?

Okay the question is for the others on the call so that would be Steve Metalitz, Wolf-Ulrich what are your feelings about whether it's just the house that nominated the individual or should the other house have something to say? Wolf-Ulrich and Steve, any thoughts on that, go ahead Wolf-Ulrich.

Wolf-Ulrich Knoben: Yes. Well as I said (unintelligible) I don't know basic doubts, you know, about that. So I'm not sure. So - and I think, you know, because

representation of board members representing the community they should be more than just the house. That's my opinion.

Steve DelBianco: Thank you, Wolf-Ulrich. Steve Metalitz, anything to say on that one?

Steve Metalitz: Well yes. I'm kind of with Wolf-Ulrich. I mean I see the attractiveness of what the majority now is supporting. And I did raise this point about having some symmetry so I'm attracted to it. But I'm not sure it's consistent with the bylaws so I guess I'd have to reserve judgment on that.

Steve DelBianco: Got it. Thanks everyone. I'll note that in the report so that they can guide what GNSO council does in terms of modifying the procedures. Amr your hand is up.

Amr Elsadr: Thanks Steve, this is Amr. I just wanted to note two things. One on this point specifically and perhaps on some others. During the call today (David) who's not on the call and I think it would be helpful to maybe take the consensus call for these issues on list. And I believe you did indicate at the beginning of today's call that we would do this and we would provide till the end of today for folks to weigh in on list on these issues. So I think that would be great.

I also wanted to make a general comment on something in the drafting team report Version 4. Within the report there are instances where the consensus of the drafting team members has been noted and they accurately reflect those positions at the time when the straw polls were taken. However it seems to me that in some of these instances at least one concerning the for example the NomCom appointees involvement. Some of the views may have changed since we last business (unintelligible). And I think it's a bit problematic to reflect those in the report the way they are if we do not clarify what the consensus is for each recommendation each position at the end. And so I think it would also be helpful on these issues or at least on the recommendations that we point out at the beginning of the report that we clearly indicate the consensus for each one of them. Thank you.

Steve DelBianco: Thank you Amr. Perhaps you missed it but we're moving the recommendations to the beginning of the report and therefore...

Amr Elsadr: Yes.

Steve DelBianco: Right okay. So straw polls are simply a document to show that we consider alternative views but then when there wasn't sufficient support we moved on. So when I circulate the report if you see further ways to edit that please indicate that. And I'll do my best to see if I could make it somewhat shorter but please understand something at eight pages this isn't a long report by any - a long report this is a brief report coming out of a working group the shortest I've ever seen. And in fact the recommendations are gotten to right in the beginning of Page 1 I don't believe we're going to be presenting a lot of obstacles.

All right what I asked staff - yes exactly Amr. We're already shorter. Let's not worry about (unintelligible). I've asked staff to put up on the screen a chunk of the bylaws that we have today. And staff you may need to let us control this so that we can make it a little bit larger. It's difficult to read. Thank you for that. Folks this is what is an 11.3 in the bylaws. And this is where that default threshold on GNSO. It's possible that the entire work of this group if you'll scroll down please you'll see in yellow I highlighted in yellow what we would recommend adding. And I haven't - I drafted this before the call began. It's a possibility that this would change a little bit.

But all of the sum total of our work is probably going to boil down to just adding the stuff that's in yellow to the bylaws and everything else is done within GNSO procedures. So for instance if you look what I have in yellow on the screen we would be suggesting that we came up with only a handful of decisions for which a GNSO supermajority which is a defined term is required. And I realize we may have added one or two on this and I'll add that.

The second thing we said which would be Number 21 is that a 1/4 of each house or a majority of one house was required to request a document inspection. Other than that we have relied upon what is called the default rule which is as you know direct involvement it's an existing part of the bylaws not that we need to point it out in any way. So it's possible that this all of the work that we came up with could result in just adding two paragraphs to 11.3 Section of the bylaws clarifying how the GNSO reaches those decisions in council.

And so I will put that in the draft report as the outcome of the recommendations and invite readers to look at the entire table that staff helped us prepare but it isn't as if one has to go through that table and make changes to every single section of those bylaws. We'll take a quick queue on that. All right seeing none I'll go ahead and - okay sorry go ahead Steve Metalitz.

Steve Metalitz: Sorry. I'm fine with including this. But just as a drafting matter when it comes down to actually changing the operating procedures you probably shouldn't lump all of this together under the default. There's a lot of places in the procedures now where you say the majority of each house. So that probably should be spelled out. But I'm - given our time pressure I think this - once you've updated this with whatever came out of the call today I think this is a reasonable summary.

Steve DelBianco: Thank you Steve. I appreciate that. I was thinking you were going to say that we'd want to modify the bylaws so that the default explicitly could cover non-policy related matters but maybe that's not the time or place to do it. So I think that what you just said Steve is that your preference would be that the majority of each house then list underneath it all of the different decisions that could go with that. And I'll give that a try. And I'll give that a try. I'll give that a try.

Steve Metalitz: I don't think you need to spend time on that now. I'm just saying as a drafting decision when the council ultimately acts on this they may want to do it that way. But this...

Steve DelBianco: Okay.

Steve Metalitz: ...communicates basically what we've decided I think.

Steve DelBianco: Okay, thank you Steve, appreciate that. All right everyone I guess we have some work left to do. I will make the amendments to the draft report. It should be an easy matter to amend the big mapping tables because we only made a few changes to that. And I appreciate everybody's indulgence with that. So please send me an email in the next several hours. And it would be my hope that all the drafting team members can signal whether they support the report in total. That's a yes no on the report. I have a chance to stick it into council's hands tomorrow for the purpose of council to decide whether it wants to put it on the agenda for 13 October.

Our report does a good job describing things that we considered and did not proceed with that it is open to any member of this drafting team if they wish to embellish the rhetoric or come up with alternative proposals as part of a minority report. And a minority report doesn't require the consent of the drafting team. But as a courtesy if anything is cooking in that regard we'd want the entire drafting team to know about it so that it could be submitted with full knowledge of everyone on the team.

Any other comments for the record? This could be our last call. And if it is I thank everybody for the incredible amount of work you've done on this. But I have a sneaking suspicion we may have to reconvene one or two more times to clear up some loose ends. Thanks everyone and enjoy the rest of your day.

Woman: Thanks all.

Man: Thank you.

Wolf-Ulrich Knoben: Thanks (Brian).

Woman: Is now adjourned. That will (unintelligible). Thank you very much for time and consideration and have a lovely rest of the day. Bye-bye.

END