

**gTLD Registries Stakeholder Group
Tuesday, 20 October 2015
ICANN 54 Dublin
Afternoon Session (following ICANN Board session)**

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Keith Drazek: Ready to start the recording, please.

Cherie Stubbs: And just a reminder for anyone speaking to please announce your name and affiliation for purposes of those participating remotely and for the recording.
Thank you.

Keith Drazek: Okay, Jonathan, go ahead.

Jonathan Robinson: I assume it's a continuation of the topic on the GNSO Council Chair.

Keith Drazek: Yes. Thank you, Jonathan. That's the main topic - or the remaining topic of business. We have one other topic that Paul wants to discuss before we get to that. Then we'll deal with the trying to finalize - or at least advance - the discussion on the GNSO Council Chair, and then we'll ask for any other business. So Paul, over to you.

Paul Diaz: Thanks, Keith. Paul Diaz for the record. It'll only take a moment. It's a call for folks to cast a vote on the current ballot for the Charter changes. These are the two questions that we have out.

First, about the approval of text to enable an association model for participation. And the second one - and I understand there's some confusion - they are merely text changes around weighted voting. None in the provisions; none in the standards.

The criteria that we use for weighted voted were not changed, but the language was just cleaned up because it was very hard to read. So just want to be clear to everybody, there's nothing changing around weighted voting in terms of how we determine a vote. It was merely administrative text changes.

But those two items are on a ballot that's open right now. Very important because this is our Charter, so we're trying to get as much participation as possible. Vote is scheduled to run through this Friday, but right now we only have 10 people voted so, please, I implore everybody, take a look, cast your vote.

If we can get to at least a majority - which is 27, I think, right now - we need - we'll be good by Friday. If not, well extend the vote, because this is too important. We've got to have the right number. That's all. Questions? Thanks. Back to you, Keith.

Keith Drazek: Thank you very much, Paul. Jonathan, Jeff, did you have something?

Jonathan Robinson: Thanks, Keith. It's Jonathan. I just want to raise one other point that we haven't discussed - and I think I might have raised on the List - that there is a consequence of choosing either candidate in terms of the sort of leadership team or the Vice-Chairs.

So we clarified neatly on the List that a tie has consequences and that tie just - for those of you that weren't tracking the List - is if we do end up with a tie, we end up in 30-day cycle waiting for another reelection, and the Vice-Chairs take over the running of the Council, as such.

So that's one important role the Vice-Chairs do play. And their role can be enhanced or diminished, depending on the extent to which the Chair leans on them, I suppose, and to the extent to which they are willing and able and step up to the plate.

Now in the case that we elect James to be Council Chair, we would have a Registrar - the existing Vice-Chair - on the Contracted Party's House as a Registrar, and he becomes no longer eligible to be on that leadership team - the Vice-Chair - because you can't have a Registrar in both positions.

So at that point, one of our Registry Councilors would have to step up to become Vice-Chair and, you know, maybe I won't presume who that would be, but that's certainly a case. So from our Stakeholder Group's point of view, we would get a Vice-Chair at that point which we don't otherwise have.

On the non-Contracted Party's House side, it's either the - I'm not quite sure again what would happen there. I have heard rumors that David Cake has not been reelected to the Council, but I don't know if that's true. If not, then David Cake stays as Vice-Chair, I assume, or maybe Heather comes in as Vice-Chair.

The other way around, clearly if Heather gets elected, David Cake stays as Vice-Chair, or whomever else the non-Contracted Party's House put in as Vice-Chair, and Volker would probably stay as Vice-Chair.

So I think that the permutations. You just need to be aware that there are ramifications for whomever we put in this Chair for the Vice-Chairs, and what I might call "The Leadership Team" of the Council. So I suppose the only other things is in the candidates' statements, James made it very clear he would lean heavily on the Vice-Chairs.

I mean, to just - I'd like to go on record and say that I think Heather's great, and I think she's got many, many qualities, so if she wasn't successful as Chair, personally, I would advocate strongly to her - I'd love to see her come in as Vice-Chair.

Now, the final detail is - as far as I understand it - the non-Contracted Party's House have an arrangement within that group that they alternate Vice-Chairs on an annual basis. So I don't think it's is a formal or contractual situation, but I think they have an informal arrangement.

So I would expect that the commercial Stakeholder Group would be able to put forward a Vice-Chair in the event that they didn't get the Chair again. I don't know the mechanics of that house and how it all works, but that's my understanding.

Keith Drazek: Thanks, Jonathan. I don't know if Jeff wanted to get in, but I think Kristina wanted to respond.

Kristina Rosette: Yes, just briefly. In terms of the non-Contracted Party's House, they view the Vice-Chair term as being one year, so even if the existing Vice-Chair is reelected to Council, their term would come to an end.

As a de factor matter, the two Stakeholder Groups have alternated Vice-Chairs, but it would be extremely inaccurate to say that there is an agreement of any nature.

Keith Drazek: Okay. Thanks, Kristina. Jeff?

Jeff Neuman: Yes, I just wanted to come back to Jordyn's proposal of letting each Councilor kind of vote their own conscience. For a number of reasons, I don't think that's the way to go. I think that the three Councilors we have coming in - it's not - this is not anything against them, obviously. They're very qualified, but they don't represent, individually, the - all of types of Registries that are out there.

So it would not be accurate to say that their individual views would necessarily represent the views of the Registry Stakeholder Group. For example, there are no brands. That's a Councilor, right? And they have very different interests.

For example, the - Donna raised a very interesting, good point that for her, the Registrars are their customers. For the brands, the Registrars are not their customers. But they don't have those same concerns. So we really should come to a decision as a group, I think, and then instruct our Councilors on how to vote.

Keith Drazek: Thanks, Jeff. Ken, go ahead.

Ken Stubbs: Yes, a little institutional knowledge. I wish to hell Chuck was here, but he may be - all right, he's online. Chuck, correct me if I'm wrong. Have we ever had a situation where we split a vote? Thank you.

Chuck Gomes: Ken, this is Chuck. You know, I can't remember. Certainly, as has been pointed out, our Charter allows for that, so that's certainly a possibility, but, you know, I don't know whether we have ever done that or not. Maybe not.

Since I've got the floor, let me say something else on a little different angle. When we get to the point of selecting a Vice-Chair for the Contracted Party house - whether it be from the Registrars or the Registries - although it's not a requirement, I would suggest that we pick - consider picking - someone, whether it be on the Registrar side or Registry side, who may be willing to serve as Chair in the future, because it is really helpful for a person coming in as Chair - and I know Jonathan did it without this, and did a superb job.

So, but it is really helpful experience for a Chair to have been Vice-Chair for a while. It makes the transition a little bit easier. Again, that's not a requirement, but I would just suggest we keep that in mind, because it is helpful preparation for the possibility of becoming Chair later. Thanks.

Ken Stubbs: Yes, and I'm going to respond to Chuck. I happen to agree with him, and I think we both have somewhere between 15 and 17 years here. Also, I want to agree with Jeff. We've come a long way, and our ability to have the votes that we've made in the Council - be as representative as possible of the composition of the group.

And I think that we have to keep that in mind as we move forward - that the people who are voting for us have to be as representative as possible, and that's why I think that's the way it has to go.

Keith Drazek: Thanks, Ken, and I think the challenge there - and I don't disagree with you - but the challenge there is that if we are going to direct our Councilors to vote, then the direction needs to be also representative, and we have 24 hours to make this decision.

So Jordyn's point about the ability to properly, if you will, determine consensus - or the levels of consensus - is a challenge. And it's something that we have to deal with. So I have -okay - we've got a queue, so I saw Jordyn first, Stephane, anybody else, and then I want to get back in queue. Jordyn and then Stephane.

Jordyn Buchanan: Yes, so it's Jordyn Buchanan from Google. Just to respond to Jeff's point. I wasn't suggesting that the Councilors should vote their conscience because they were representative of the Stakeholder Group.

I suggested - to Keith's point - that they should vote their conscience because we don't have any way as a Stakeholder Group right now to get to a determination as to how they should vote, I don't think.

Like, maybe it should be a split vote; maybe not. I don't know what - how many brands or how many people that support Heather would have to agree with that. Would it be a third of the people in the room today would mean that one vote goes to Heather, and if 2/3 goes to...

Like, how do we figure out how to split the vote? Whether we split the vote? Like is it just the people in the room? Do we have to have a ballot? Like, I just - I don't think we are - we have -this, I think, highlights a difficulty we have in the Stakeholder Group now, that we will need to resolve, and Keith is probably going, "I'm glad this isn't my job anymore."

But I think we're going to have to work through how we're going to deal with situations where we can't get to a consensus view of the Stakeholder Group, because with the new types of business models we have, that may happen more frequently than in the past.

I don't think we're equipped to do it today. And so therefore, I think, I don't see a better alternative than simply allowing - than saying, "We don't have a consensus view - or a view that we can direct the votes at this point - and so therefore, the Councilors should vote their conscience."

I also think it's particularly appropriate in this matter, because I actually think they will have the working relationship with the GNSO Chair, and so it actually - it is a decision that is more relevant to the Councilors than to the Stakeholder Group.

Some people may disagree with that, but I think this decision in particular - this decision in particular, I think there are factors that weigh more towards letting them make the decision than in the general case.

Keith Drazek: Okay. Thanks, Jordyn. (Stephane), and then I'm putting myself in queue.

Stephane Van Gelder: Thanks, Keith. Stephane Van Gelder, StartingDot. Yes, having been a GNSO Councilor, GNSO Vice-Chair and GNSO Chair, I've always come at it thinking that the people that elected me to those positions trusted me to make my own mind up if I needed to.

And I know we've heard from three of you this morning that you didn't - you wanted to be given direction. You know, I've agreed with Jordyn on the List, and I couldn't agree with him more now.

I think in this issue, we - it's not just the choice that we're making now. And so I'm not talking specifically about the GNSO Chair debate. It's also about sending you guys a signal that we trust you. We've elected you as intelligent human beings capable of making these very tough decisions by yourselves if we all die or fall under a bus. And there's only the three of you left to defend Registries worldwide.

So you know, I think we want to tell you that we trust you, and if we are unable because of these dynamics and because of our, you know, specific operational issues to come to a decision, then certainly you have my vote of confidence.

Keith Drazek: Thanks, Stephane. Jeff, go ahead.

Jeff Neuman: Yes, look, this is not an issue of voting for or having confidence. There's a reality here too. The reality is that the three Councilors work for three companies, right? And they don't want their names - I would think - associated with voting against their customer. I would think that would be a very tough position to put them in, and I don't think we should put them in that.

So even if one of them - let's - even if Keith thought Heather was better, you know, that's now not a vote of the Registry Stakeholder Group; that's a vote of Keith Drazek from Verisign. Right? And now Keith Drazek from Verisign is associated -if he voted for Heather - with voting against his customer.

That's not a fair position to put him in. We shouldn't put him in that as a group. We should direct him as a Stakeholder Group to vote in a certain way, and this way, if for some reason Keith Drazek from Verisign votes against the way that Verisign wanted him to, it doesn't come down on him, on Keith. It comes down on the Stakeholder Group. It's for a layer of protection as well.

So this has nothing to do with not trusting the three Councilors. I think they're excellent at what they do. We put them on there for a reason. But this is a decision that needs to be made by the Stakeholder Group.

Keith Drazek: Okay, thanks. I'm going to take my opportunity to speak here for a minute and give you my thoughts on this, and then we can continue the debate. But I wanted to at least let you know sort of what I'm thinking.

And this is in part - you know, I'll keep my Chair hat on, but also because I'm one of the incoming Councilors and will be put in the position. As I said at the beginning, I personally would prefer not to, sort of like, have the discretion, if you will. I would prefer, generally, to be told by the Stakeholder Group how to vote. That's how we do business. That's how we've always done business.

That said, this is a unique and unfortunate situation. To Jordyn's point - backed up by Stephane and some other comments - is procedurally, how do we determine that we have consensus of the 100-plus member Stakeholder Group? It can't be just the people in this room.

We can get some direction or some sense of the room here. We could put it out to the List tonight and ask for an urgent response from people who may get the email but have not been part of the discussion, right?

So, but I think we can do something to get a better indication about where consensus exists or doesn't. Or a general sense - not specific - of sort of what the balance is.

You know, are we - if we take the sense of the room here, and two people put up their hand and say they would prefer Heather, that tells us something. If it's 50/50, or much closer, that tells us something too. That gives us - as Councilors, if we were to actually be given the discretion - information on which to base our decision.

So it seems to me that we have three steps here. One is to determine - and this is what I'm suggesting, and if anybody wants to object to this, feel free to say, Keith I think you got it wrong or that's not the right way to go.

I think we should take the sense of this room, and I think we should put out an email immediately after this meeting to the List and asking for feedback. Asking for people to tell us whether we prefer James or we prefer Heather. That's the first question.

From that, we can decide do we decide - and from, that we'll determine sort of the weight of, you know, where the sense of the room is - the big room. From that, we'll be able to decide on whether to split. I'm not opposed to splitting votes. But I think it needs to be done, to the extent possible, supporting the outcome that we want to have. And I'll get to this other point in a second.

So I mean, our Charter - as Chuck noted, and as we've talked about - our Charter allows for split votes. So that's not off the table. I mean, we can't just say, "Oh, we've never done it. We're not going to do it now." It's permitted in our Charter. And so, that's certainly, in my opinion, is on the table.

My question - and we need to talk this through, and I'm not a mathematician by any stretch - is if we split our vote - and let's just say for the sake of argument, 2 to 1 - 2 to James; 1 to Heather - as the sign or the signal that it's not just a block and that we've actually put some thought into this - which I'm not opposed to. Does that put James at risk? Jonathan - Thank you. And then Ken.

Jonathan Robinson: Well, the situation we then find ourselves in is we've got Contracted Party's House voting five out of seven votes, assuming the Registrars all vote for James, which of course is a perfectly reasonable assumption.

So we've got three from our - three from the Registrars, two from us. But could one we know is against - or for - Heather, and we don't know how the non-com appointee would choose to vote.

So let's just assume it's not for James for the moment. So we've got five, and in order for it to go through to another round where a preferred candidate is chosen, it needs to be eight or more out of the total of the fourteen votes. So

it would need either the remainder to be eight in favor of Heather or three more in favor of James. That's the kind of math that I see. I hope I'm right there, but that's my understanding.

Man: (Unintelligible)...If you double the number of people.

Jonathan Robinson: Oh, that's true. It's a - sorry, proportional. I'm sorry. Yes, yes, yes. It's proportional. Percentage - it's a percentage - sorry. So you need -you almost need a little spreadsheet to do the percentages.

Keith Drazek: And that's what I'm trying to get at. And I'm going to ask somebody who has math skills better than mine - which is probably all of you in the room - to help on this, because I think we need to know the answers to this question.

In other words, if we're - if we end up after we do a sense of the room consensus call and say, "The numbers dictate that we could split and go two to one," but the strong preponderance was support for James, we don't want to just sort of flip a coin and throw it up in the air and not necessarily follow through on the consensus, even if it's rough, in my opinion.

It's like - in other words, if we're going to split the vote, we need to know whether it's as a signal or whether it's actually putting the election up in the air. And until we have those numbers, and know what the spread is, and know what the breakdowns, we can't make that calculations, or at least I can't.

Jordyn. Yes, I'm sorry. Ken, and then Jordyn.

Ken Stubbs: At the risk of being made a fool of, we are. The answer - and first of all, any assumption we make has to be predicated on the assumption that the other House will fully support Heather. And that includes the non-commercial appointee, okay? But - and Chuck you could probably correct me if I'm wrong here again.

If when they get done they're going to look at the highest percentage, okay? If we split our vote and the other house fully supports Heather, she will have the highest percentage, so what we could have is a situation here where splitting our vote would automatically give the election to Heather.

And yet, hypothetically, we could have a preponderance of the members of this constituency who feel that James would be the better person, and yet by splitting the vote, what we've done - if there's no - you can't re-ring the bell. It's as simple as that.

Keith Drazek: And to be clear, you know, if we end up with a, you know, a 65 - sorry, let's go 60/40 split in our, you know, sense of the room, then maybe that tells us it's okay to put it up in the air, right? But if it's a - you know, this is what we're trying to balance. So thank you, Ken, I've got Jordyn and then Chuck.

Jordyn Buchanan: Thanks, Keith. So I'll make two points. The first is that I think it's not going to be knowable what the effect of a split vote is going to be, because like we already - it seems like we have some information already that the non-commercials are likely to split their own vote, and we don't know what - to what degree that's true.

We don't know what the non-com appointees are going to vote, so there are just too many scenarios, I think, for us to reasonably predict. So of course splitting our vote decreases the chance that James will be successful and increases the chance that Heather will be successful, but I don't think there's going to be some bright line where we can say like it's totally safe or totally unsafe without more information than we seem to have at the moment.

My second point is, I don't think that should matter if we agreed upon some mechanism for allocating the votes. If it was really the case that we said, "Okay, look, we'll take the sense of the room, and if at least a third of the people choose one or..." You know, for each third that you get, you get a vote, basically, and we round in one direction or the other.

Then if it was really the case that a third of us thought that Heather should be the chair, and we had agreed to split votes, then it would seem that the right thing to do - independent of whether it caused James to lose the seat - would be to allocate votes that way.

Once again, I'm very wary of this. I think inventing a procedure on the fly to try to allocate votes seems much worse to me than letting the counselors make a conscience-based decision but, you know, we're not voting members of the Stakeholder Group, so at the end of the day, we'll defer to those who are.

Keith Drazek: Thanks, Jordyn, that's all very helpful. I've got Chuck in the queue, and Ken, and Kristina and Bret. Thank you.

Chuck Gomes: Okay. Hi again everybody. First of all, there's two types of direction we need to give our Councilors, if we give them direction. One is for the first ballot, and one is for the second ballot - if there's a second ballot.

Now I don't know how many saw the brief summary I sent of what I think is a likely scenario. If you didn't, you may want to look at your email. Because I think it's clear that there will not be an election on the first ballot. And so, there are two results - because the chances of one candidate getting 60% of both Houses, I think, is nil.

So we know there will be a second ballot. Now I think one thing that might be easy for us to do today is to decide on what direction we give the Councilors on the second ballot.

Now, if the first ballot resulted in a tie, we have up to 30 days to do that, so it doesn't necessarily have to be decided today.

But if the first ballot does not end in a tie - in other words, one of the candidates - James or Heather get a higher score than the other - then the second ballot would occur, according to my understanding, right away in the Council. (Unintelligible) would be between that leading candidate and "None of the above." So you eliminate the lower scoring candidate.

Is it reasonable to think that we as a group would then be willing to go with the candidate who got more votes? And if so, we could direct our Councilors on the second ballot, if there's not a tie, to support the leading candidate.

Now, I don't know if that - if others agree with that or not. Now in the case of the first ballot, as several have pointed out, we (can't) determine how it's going to come out. If it comes in a tie, there has to be another vote in 30 days. No more than 30 days.

If it doesn't come out in a tie, then that's where we could direct our Councilors. So, the last thing I would say with regard to taking a sense of the room, the only thing we should be careful of is that just one person per voting member actually express their sense. Otherwise it could get very confusing in terms of assessing that.

Keith Drazek: Yes.

Chuck Gomes: Thanks.

Keith Drazek: All right. Thanks very much, Chuck. That's all very helpful.

So I have a queue. I want to make a comment in response to Chuck. I have Ken, Kristina, Bret and Stephane. Would anybody else like to get in queue at this point? Okay.

Chuck, my response to your question about the second ballot - assuming it does not go to a tie. And I agree, it's unlikely to - the first ballot is unlikely to result in a candidate. It's unlikely to go to a tie if it - if we end up in a situation where we have to vote for the leading candidate or "None of the above," I've heard nothing today that would tell me that we would vote "None of the above."

I mean, it's pretty clear to me that whoever the winning - or the leading - candidate is, in the second ballot, would be supportable by this Stakeholder Group. Jonathan?

Jonathan Robinson: Just a very brief response. I think we should go on record, as I'm sure you'll all agree, that actually our sense is more than that. It's not that we wouldn't - we actually would positively support Heather in that situation, because we've heard a lot of good things about her, and so, in that circumstance, we should probably have no reservation about supporting her.

Keith Drazek: Agreed. That's what I was trying to say. If I wasn't clear, then absolutely. Thank you. Yes, we would have no reservations. We would positively support either candidate if it were that candidate and "None of the above." So let's just agree that - I think we're all agreed on that.

So, then the follow-up question is I think we do need to take the sense of the room. We're going to get through the list of speakers here, and then I think we need to take the sense of the room to help inform the three Councilors, and then we'll have to decide whether we are directed or not at that point.

And if it's - if there is clearly no consensus - and when I say "take the sense of the room," I'm talking about here and out to the List. And then if it's - if it appears that there's a very strong consensus in one direction, that will send us a message.

And if it's much more divided, I mean, Jordyn's point about a third, a third, and a third is something we ought to consider. I - this is a very delicate moment, right? This - I totally understand Jordyn's point about, you know, coming up with sort of procedures on the fly and that we need to be sensitive.

And I'm - as much as I said - personally, I would prefer not to have the freedom. That I would prefer to be directed. I respect Jordyn and Stephane's points about, you know, coming up with a procedure that might be considered illegitimate after the fact. So okay. Jon, hold on. I've got Ken, Kristina, Bret, Stephane and Jon. Ken?

Ken Stubbs: Yes. You may, inadvertently, have created the solution to this problem. If we - we have to have some assumptions. If we assume that we voted as a house for James, and the Registrars did, and the same on the other side, and we end up with a tie, you now as the head of the constituency have 30 days to get a much greater sense of the feeling from the constituency. That's the first thing that I think you'd be looking at.

Secondly, let me explain one thing I am concerned about. What we would be doing if we split our votes is we would be setting a precedent. That precedent could be used any time in the future that there is an issue within the constituency that let's say, hypothetically, one-third of the members weren't happy about. They could insist on a situation where it would be voted that way.

I feel very uncomfortable about doing that because I've always come from an environment that said, "In the long run, the majority rules, like it or not." That's what - that's how the College of Elections works.

But I don't like the idea that we could have something get into the situation in the future. I think we need - sometimes we just need to settle things. And I'm afraid in the future we'd establish a precedent that may not allow us to settle things. That's all.

Keith Drazek: Thanks, Ken. I've got Kristina, then Bret, and Stephane, and Jeff and Reg.

Kristina Rosette: A few things. First, by my very basic math, if we were to split our vote and assuming that the NCA and our House voted for Heather, Heather would have to get at least 11 votes in her House - in the Non-Contracted Party House - for there to not be a tie.

If I remember correctly, there is a GNSO Council get-together on Tuesday nights to go over the issues that were addressed in the Stakeholder Group meeting to make sure that isn't going to be any ugliness that needs to be dealt with on motions.

It would seem to me that that is a really good opportunity for our Councilors to get a sense of how the NCSG Councilors are going to vote. Because I think it's prudent to assume that all - you know, all nine CSG Councilors are going to vote for Heather. So that would be kind of my first point.

Second, picking up on something that Keith had - Keith mentioned, I feel really strongly that under no circumstances - if it should arise - should we vote "None of the above." I was on the Council when there was such an election. (Rafik) voted "None of the" - "Not Chuck" - versus Chuck. And it was a moment that many people remember both as a reflection of the Council and that constituency. We don't need that.

Third, I think if we end up in a situation where the Councilors - our Councilors - are voting their conscience, or however we're calling it, I would like to know how they vote. Not necessarily before the election, but I would then like to know after the election how they voted. I think that's really only fair.

And finally, to Ken's point, I understand the concern about not getting into a situation where we have to determine with mathematical precision the level of consensus on each issue so that we're not having to split some votes go to one, some votes go one-two, but as a practical matter, ICANN has changed.

This Stakeholder Group has changed. I'm not sure it's realistic to assume that there will always be consensus on every issue, and I think to preclude ourselves from using the mechanism that the drafters of our Charter had the foresight to include is counterproductive.

Keith Drazek: Thanks, Kristina. I just want to respond there a couple of things.

Now, I'm going to take myself back out of queue. I got (unintelligible) a minute. Got Bret, Stephane, Jeff and Reg.

Bret Fausett: I just want to reiterate something that Chuck said before I got to it, which was that the sense of the room - we need to make sure that since the room is one vote per voting member, and because otherwise we may get skewed, and also I think the point you made, that we need to go back to the List is

important, because Chuck can't see it from the Adobe, but the room is actually quite light right now compared to where it was this morning.

Keith Drazek: Yes, thanks. Actually what I wanted to say a minute ago was on the precedent issue, I think there's a couple of things here. One is, I mean, we have to be very careful about setting, you know, sort of new procedures or stuff on the fly. We have to be careful about setting precedents in ways that we don't intend.

Part of this - part of the reason we're dealing with this - and I have to take some responsibility for this - is we're having to make this decision at the 11th hour. If we had made this decision - we knew who the candidates were going to be weeks ago.

We should have made this decision far before this, where we could have gone out and had the actual consensus call to the List, and we would have known. So I think that if - we're in a bad situation right now; or a tough situation now because of the timing more than anything. This is perfectly manageable, it's just that we have to find a way to manage it in 24 hours.

So in terms of the precedent of splitting vote, I understand. I understand the concern, but I think the way to handle that in the future is if you end up deciding to split votes, you do it in a way that is, well, it's predictable and it's taken care of and actually does, is based on the consensus call, or the results of the consensus call. So let me pause there, get back to the list. Stephane, Jeff and Rich.

Stephane Van Gelder: Thanks. Stephane Van Gelder again. So after we've spent endless hours talking about the actual mechanics of this, I'm still no clearer as to actually who I might want to ask to support, which is a problem I think at this late stage. So I just wanted to try and summarize what I thought my pluses and minuses are as we go into this.

If we support James, I think the pluses that, first of all we're siding with the registrars and keeping the ECPH unity strong, which is certainly something that we want to look at, and we feel, or some of us feel we're also citing, we're also electing the best man for the job. If we support Heather, some of us feel that politically in the wider context we are actually sending a positive signal that the GNSO chair doesn't always have to come from the CPH, and we are also supporting a quality candidate.

So with that being said, I think it's an extremely difficult situation, you know. And rather than spending lots of time on counting up the votes, we really have to come to a decision as to whom we want. Once we know who we want, it's easy to get to it. The CPH is strong, and you know, if we can talk to the registrars, if we know what we want, it will solve itself.

Keith Drazek: Thanks, Stephane, this is Keith. The challenge is determining how we know what we want, right? That's what we're wrestling with is how to make sure we

can have a legitimate answer to that question. So I'm totally with you, and we're going to get to that in a second, but that's the challenge right now is being able to truly know what we want in a legitimized way. Reg and then I think Jon had his hand up. Sorry, Jeff, and then Reg.

Jeff Neuman: Sorry, Reg. Jeff Neuman. Yeah, with taking a sense of the room, it's clear, I mean I can't vote because my couple clients that I represent, and I'm a delegate for a couple, well two of them are out of the room and one's not here, so we'd need to definitely go off list and do that.

But I just want to clear something up. We actually have with the votes before, this doesn't set a precedent. It's been a very long time, and I think it was Cary Karp and I, because the sponsored TLDs had a different view on whatever issue it was, from the unsponsored TLDs.

So we split it, it was one and one and then the, we did a weighted voting for the third. And I think that came out, I don't remember who that person voted for. So it has been done before. So we would not be setting, I mean, very few people remember that, and it was such a long time ago. But it wouldn't set a precedent that we haven't done. And the bylaws, the charter, it does call for it. I remember drafting that provision because of that case when Cary and I voted to have the vote differently.

So the charter calls for it, we should not be afraid to use it, and then you could do, I mean the charter also calls if someone wants to do weighted voting to figure it out, that could be done as well. But there's a lot of things that we could do.

Keith Drazek: Thanks, Jeff. Reg?

Reg Levy: Thanks. I was going to say as well that I don't think there's a huge deal in splitting the vote, because obviously it was put in there for a reason, and the registry stakeholder group has changed in the last couple years. Its makeup has changed and we now have voting members who are also, I have, they are IP interests, and that's okay. We're all part of the mosaic, and we have three votes. But I'd like to make sure that we represent the desires of the voting members with the three votes that we have.

Keith Drazek: Okay. Freida?

Freida Tallon: Just a general comment. I know that we've kind of reached a point where we're now starting to go round into a circle. And at this point, what about, both candidates are actually here in Dublin. We had the telephone call a couple of weeks ago to try and help people understand, not everybody that's actually here and that will be giving a sense of their vote actually have heard what either candidate has had to say.

So would it be prudent or would it be possible to try and get them into a meeting with everybody, or is that just too, is it too short notice? Just a thought.

Keith Drazek: Thank you Freida, actually I think it's unlikely to be able to fit something like that into the calendar. Fortunately, and Cherie correct me if I'm wrong, the session that we had with both candidates was recorded and we have the MP3s and they were circulated to the entire list. We could certainly re-circulate those as part of a, an e-mail urgent request for feedback. So I think it's, I think the idea of trying to get people informed is right, and I think we have a mechanism to do that.

Freida Tallon: That probably would work pretty well, and that way at least when you're putting up the fence of what people want to vote or which way it might swing, at least they can make an informed decision. So...

Keith Drazek: Agreed, thank you. Ken and then we need to draw a line under this and make a decision

Ken Stubbs: Yeah, I'm still not really sure what's going to happen between now and tomorrow, I know you're talking about, I think it's extremely important that the e-mail that goes out tomorrow or that goes out to the people who are not here, explain exactly what the consequences of the decision, if they're going to make a decision, are. They need to understand that even though this sounds like it makes sense, it may not make sense if they knew everything.

I don't want to have a situation where somebody comes back later on and says "Oh, I never would have voted that way if I'd known this." And I'm not asking somebody to write a book, but I am saying that it does need, we do need some clarification. Chuck went a long way, Jonathan's gone a long way. I really think that needs to be in there.

Keith Drazek: Ken, were you volunteering to write that note? I'm joking.

Ken Stubbs: I was going to say, no, my writing skills are not that strong.

Keith Drazek: All right. So I have one final question, jon, go ahead and then I have a question.

Jon Nevett: I thought I was in the queue, sir. Oh, Kristina, who wants to correct her math.

Kristina Rosette; Yes, my math is wrong. So in other words, if we split our vote, the NCA in our house votes for Heather. Heather has to get four of the seven votes between, of NCSG and NCA. So for counselors seeking together information tonight, that's what you should focus on.

Keith Drazek: So...

Man: It's, the way Christine said it implies that we're assuming the NCA will vote for Heather. It's a kind of worst-case scenario from that point. Yeah, yeah, exactly. So just to be very clear, I mean, we're not directing the NCA as part of that split, so let's just be very clear. The NCA we currently assume will vote according to her conscience in this case.

Jonathan Robinson: Right. I mean, if you think of it, for every vote Heather gets in the contract of parties house, James has got to probably get two votes in the other house, because they have doubled the number of, it's a little different because of the odd non-com appointee. So it's not exactly double.

But anyway, you know, one point I want to make is, it'd be great maybe to get a show of hands in the room, just to help guide us where we're thinking, also I support as I said that we vote for James in the first ballot, but I'm open to a split as well.

So when we do a straw poll, it shouldn't just be "Do you support James or do you support Heather?" It could be, you know, based on the number of hands in the room, if I think a significant percentage of the constituency stakeholder group is in favor of Heather, I would be more likely to support a split than just an all-out three-zero.

So I think it's got to be a little more, I know it complicates things but it's got to be a little more nuanced as we, as whoever takes the pen in drafting that note.

Keith Drazek: Agreed. Thanks, Jon, and that was in my earlier comments I talked about, we need to determine preference, determine the weight of consensus to be able to inform us and then decide on the split. So yeah, absolutely in line with what you're thinking. Donna, you wanted to get in? Go ahead.

Donna Austin: Yeah, just to Kristina's point about, you know, getting a sense of how people are going to vote, it's not the new council that will be in the room tonight. So there's going to be a change of about seven different people, I think. So it may not be all that useful.

Keith Drazek: Okay. So I have a question and Jon's point about the sense of the room I think could be instructive, but I think we can do a sense of the room, but I think all of the feedback should be on the list or on a Survey Monkey or something like that. In other words, we can do a sense of the room right now, but I don't want those of us in the room here and then others responding to the list, because we might get people responding twice.

So my sense is I'm fine doing a sense of the room here to get some insight, but we probably ought to put it to the list. But the risk is that, pardon me, we just need to make sure everybody here votes on the list, right, so we capture everybody. So anybody opposed to doing a sense of the room here? That would not be counted in the actual official response. Anybody object to doing the sense of the room? Jordyn, go ahead.

Jordyn Buchanan: So Keith, I don't object to that at all, I think it's a really good idea. But then what? Is what I'm worried about, because you know, Jon's right, there may be a bunch of people who think it would be a totally reasonable to split votes, if that's the case, but do we need to, are we going to meet again tomorrow before the council meeting, or are we going to try to resolve this all on the list? I don't know what we're doing with the output of that.

Keith Drazek: Thanks, Jordyn. I think we should meet again if the results of the feedback are not clear in one direction. I mean in other words, if we get a response and it is, you know, 95% in support of James, that's pretty indicative, right? If it's something that is, you know, a lower threshold or, you know, much closer balance, then I think we need to get together again. Jonathan?

Jonathan: Just practically I suppose we could put that as part of the preamble that says, you know, we, depending on how the vote goes, we may be just try and kill two birds with one stone, understand where people's preferences are, and if it's below a certain threshold, that it determines a split vote, that may be, we actually would do the two things in one, unless people, maybe those are two completely separate decisions. First, at the moment is it proposed to just simply do, I know you did say what your intention was a moment ago, but is it proposed to simply ask which candidate do you prefer?

Keith Drazek: Yep. Reg?

Reg Levy: I'm not opposed to take a sense of the room, but I don't necessarily see the value in it. I think it would be much better to just send it out on the list and ask everyone to vote via Survey Monkey.

Keith Drazek: I'm also not opposed to that.

Man: Obviously those who have asked for a sense of the room see the value in it, and if you don't oppose it then maybe it would be helpful for us in determining how we vote. Okay.

Keith Drazek: So I will then make the decision to take a sense of the room, so the question is about supporting James or supporting Heather. I will ask first for a show of hands for James, and second for a show of hands for Heather, and again, just a reminder that it's one vote per voting member. So we don't end up with double counting. And again, just for the record this is not for the official count, which will be conducted by the e-mail list, this is simply a sense of the room.

So please, a show of hands for those who would prefer James Bladel. Now we know our non-com (unintelligible). Thank you. And now a show of hands for those who would prefer Heather Forrest. So if I heard correctly, it was 18 in favor of James and seven in favor of Heather.

Cherie Stubbs: This is Cherie, that's 25 votes, we currently have a full voting membership of 67, with five inactive members who can vote. So 25 of 67 eligible voters.

Keith Drazek: The key thing is that's 28%, 72, 28. Thanks, Jon. So I think that tells us something, and I think that was very informative, I hope everybody agrees. I think the next step is to take this to the list and so I'm going to ask for a volunteer to help draft that note. I've actually asked Chuck, I don't know if you've seen me ask him that in Adobe.

But we'll figure that out, but this note needs to get out and Cherie if Survey Monkey is the way to go on this, or is it a written response to the list, or to, I'm struggling here to figure out the mechanisms, if you could help me.

Cherie Stubbs: I guess the decision is, if you want it to be an open dialogue response among all the membership, I would do it by e-mail. If you want it to be a closed response, then I mean I could post the results of, through Survey Monkey. So, it's six to one, half dozen.

Keith Drazek: Okay. My sense on this one because it's sort of an awkward procedure is it would be best to have transparency about who votes for who. I mean, we all just stuck up our hands in the room here, I think it probably makes sense to know who was voting for whom. So there's transparency around it, just as a general principle I think that makes sense in this case. Ken, go ahead.

Ken Stubbs: Yeah, so what you're saying is a dialogue, in effect, right? Open dialogue, is that what you're...

Keith Drazek: No, no.

Ken Stubbs: Oh, because Survey Monkey's, I didn't realize that...

Keith Drazek: The question was whether it should be visible as to how people voted, not a question of a dialogue or a back and forth.

Ken Stubbs: I'm all for transparency...

Keith Drazek: Okay, all right.

Ken Stubbs: I'm sorry, I thought we were...

Keith Drazek: Okay, so let me pause. Anybody have any questions or comments or suggestions at this point? Jordyn, thank you.

Jordyn Buchanan: So, two questions. Number one, is the survey strictly who do you prefer, or do we include a question along the lines of, and then if the vote's split, are you okay with splitting the vote or is it just the, and then, secondly, once again assuming that, let's just assume for the moment the split is, this room is representative of our broader population. So we're going to end up with something about the not quite a third of people in favor of Heather and two-thirds something about, but not quite two-thirds in favor of James. Do we

reconvene tomorrow to digest that, or do we make a decision now as to how we're going to evaluate the vote?

Keith Drazek: I think there's no question at that threshold we reconvene. I'm, Jon, go ahead.

Jon Nevett: I'd like to make a proposal that if, that we take a vote on Survey Monkey. If the results are zero, 25%, for 75 to 100% for one candidate, we vote all three votes for that candidate. Fifty to 75% we vote two to one, 25 to 50 we vote one to two, and 0 to 25 we vote all three of the other candidate. Just do it in quartiles.

Keith Drazek: Anyone want to second that.

Man: Second, that's fair.

Keith Drazek: Okay. Any objections? Donna, over to you?

Donna Austin: I guess it's based on a philosophical thing, you know, is splitting the contracted parties house. So I do have a real concern out of that. So I understand the math and it sounds all good in principle, but I really have a problem with splitting the contract of parties house in that manner and the potential consequence that that could have on us at a later point in time. So I understand the politics are going one way, but I think we have to consider the politics of going too far the other way as well.

Keith Drazek: I have Chuck in the queue. Chuck would you like to get in?

Chuck Gomes: Yeah, I want to make sure I'm clear on what message I'm drafting, Keith.

Keith Drazek: Well, it's basically the cover note asking for the vote and explaining, providing a little bit of context.

Chuck Gomes: Okay.

Keith Drazek: Not overly detailed, a little context of the ramifications.

Chuck Gomes: Okay, thanks.

Keith Drazek: Thank you. Yes, Stephane?

Stephane Van Gelder: Yeah, just to Jon's proposal. I'm actually uncomfortable with the split vote as well, for the reason that Donna said, but it doesn't mean that your proposal is bad. If we just adapt it to, I mean I would counter propose that we just do an above 50, below 50. And if it's above 50, all the votes go to the above 50 candidate, and you know, that would be mathematically simpler, and would allow that we don't split votes.

Keith Drazek: Use the mike.

Man: I'm trying to absorb that. If you only have two people and two choices, there's always going to be one person above 50 and one below. It's got to add up to 100%.

Stephane Van Gelder: I'm sorry, I thought we had three choices, which was the two candidates and none of the above. Is that not...

Man: Someone's going to vote none of the above.

Keith Drazek: Ken, go ahead.

Ken Stubbs: All right, let me ask a question. Do we have a definition in the constituency here of a super-majority? Is it two-thirds? I'm asking, I think in our charter a super majority is defined as two-thirds, okay. It would seem to me that if a super-majority of the votes is for one person, I'm sorry, there may be dissatisfied minority there, but how can you not go vote, everything else we operate on is clearly done on the basis of a super-majority.

And I'm going to use your example, Jordyn, and maybe they got close, but at the same time they didn't get there. And we've had to establish and defend positions that are, have been made in policy development for quite a period of time based on the super-majority. I don't think, to me I don't know how you can go back on that at this point of time, you'll have to get into a new definition, a consensus.

Keith Drazek: Okay, I think the definitions are important, thank you Ken. Jon?

Jon Nevett: Yeah, I think Ken's persuasive in that, so I would amend the motion to say if it's between 50% and 67%, then we split two-one, if it's over 67% we vote three-zero.

Keith Drazek: Jordyn?

Jordyn Buchanan: I'm going to sound like a broken record, but this is the exact conversation I was really afraid of earlier, which is like "Hey, we're just going to make up rules as we go along, we're going to have like a short election, like it's going to run over 12 hours or something like that, and we're going to make up the voting thresholds as we go," and so my counter-proposal is we still do the same vote, and we use that to allow the counselors to be informed about how they would like to cast their own votes.

Because that way at least we're not trying to create some sort of voting rules that may or may not be, like not everyone's here to decide whether or not these voting rules are reasonable, you know, there's already disagreement about, like whether we should be able to split the votes or not. This feels like very dangerous ground to me that we're engaging in.

Keith Drazek: Yes, go ahead.

Brian Cimboric): Yes, Brian Cimboric, PIR. It seems as though maybe we're at a point where we might need a second vote, that being whether or not, having a vote as to whether or not the actual GNSO vote can be split. Because that seems to be the threshold question. Because if you do a quartile approach, then that presumes that the group's okay with splitting the vote. So.

Keith Drazek: Sorry, Ken?

Ken Stubbs: I'll second that request, it makes a lot of sense to me.

Jordyn Buchanan: So this is actually a good point, like the charter says we can split the vote, now we're like deciding on the fly that we're making up a new rule that we're going to not split the vote, like, this is a mess. And I don't think there's a way out of it that is not going to, some people are going to be unhappy no matter what we decide right now.

Keith Drazek: Yeah, this is a, go ahead Freida.

Freida Tallon: I think that at this stage, the sense in the room is pretty strong, and I think at this point, once we do the actual, or do the vote on the Survey Monkey, that that will actually be the definitive. So at that stage you can then decide whether votes are practical to split or not. But at this point in time, there is a majority in the room at this point in time, so I think review, send out the Survey Monkey, see what happens then, and then we can make a clear decision on whether it's necessary to split the vote or not. There's no point in supposing, just go through the motions and then we know what we need to do.

Keith Drazek: Ken?

Ken Stubbs: I respect your statement there. My only concern is, I don't want to place a huge burden on the management of the constituency.

Keith Drazek: Too late.

Ken Stubbs: It's too late. Well, the problem is, we get the vote in tomorrow and then we're going to have a better sense. That doesn't say, here's what you do. If a vote comes in tomorrow, if that's the way we're going to do it, there has to be something concrete and clear. I don't want to stick anybody on ex com with the idea of interpreting what that vote meant. You know. I think we have to at least give you direction, because it's not fair to you guys at all to be stuck with making that decision.

Keith Drazek: All right, after listening to all of this and realizing that I'm, you know, I'm in this position in having to help make this decision and also going to be one of those voting, Jordyn's arguments I think are very convincing about these procedures and setting things up on the fly. His comment is about this is just what he wanted to avoid actually I think is fairly convincing.

I think, as I said at the beginning, I did not want to be put in the position of having to, you know, sort of make the decision or call on my own, and I think that, you know, Rubens and Donna echoed that.

That may be the only way forward at this time. That said, we still need to do the sense of the membership. So we need to do the outreach, we need to do and ask for everybody to urgently in the most informed way possible give us feedback so the three of us can make that decision.

And I think, you know, you elected us to be your representatives on the council, you trust us to do the job, and I think we're going to have to turn and ask you to trust us to take the feedback that we get from the membership and handle it accordingly. And if that means that I have to vote against James, my biggest customer, then I'll ask Rubens to do it.

So anyway, I think, and so I want to pause there. That's where my head is at, that's the, as chair, my last decision potentially, last major decision. I want your, I want anybody to raise any objections if you have them. But I think that's the sense of my head. Yes, Stephane.

Stephane Van Gelder: Stephane again. Well, someone was asking this morning what power the chair gave, and you've just given us a prime example. Because you've taken all this on board and made a decision. That's the kind of thing you can also do at council level. So as you measure your votes, remember that the person you're choosing will be able to do that.

Keith Drazek: So again, let me ask if there are any comments or objections to the direction I'm leaning. Kristina.

Kristina Rosette: My only comment is that if the counselors are in fact going to vote on their conscience, I think they do need to report back to the stakeholder group as to each of them, how each of them voted after the election.

Keith Drazek: Totally agree, this is Keith. Agree 100%, never even entered my mind that it would be otherwise. Cherie.

Cherie Stubbs: If I can just ask a question that if we do, if I post out the Survey Monkey tonight, the feedback, is that to be public as well?

Keith Drazek: Yes. No? I see, I mean on the...

Cherie Stubbs: The results of the, of the poll to the voting registry members.

Keith Drazek: Yes, thanks Cherie, and thanks for asking for the clarification. Yes, the responses to the vote will be publicly available within the stakeholder group. In other words, it will be visible and transparent. I think that's the only way we can go forward on this one. Any other comments or questions. Yes, Cherie?

- Cherie Stubbs: And this might be more of a housekeeping detail. If Chuck is drafting a cover letter to provide some background for those that haven't had the benefit of being here today, might I suggest that the two questions that are, or the questions that are going to be in the Survey Monkey be included in the body of that e-mail, and that those questions that I know exactly how to phrase those questions in the Survey Monkey, so we're consistent?
- Keith Drazek: Yeah, thank you Cherie, absolutely. Chuck has typed into chat that he will send a draft message to the ex coms for review. And that we will certainly coordinate with you to make sure that you have exactly what you need so there's no confusion.
- Cherie Stubbs: And then the final point would be, the deadline for response by the voting membership, so I have time to do the compilation and get it back to, post to the list to get it out in time for the council agenda, thank you.
- Keith Drazek: Yeah. Thanks Cherie, good question, Chuck wanted to get in, and then Ken.
- Chuck Gomes: Yeah, thanks Keith. And will the Survey Monkey just have two choices, or will there be no preference choice also?
- Keith Drazek: Two choices, I think.
- Chuck Gomes: Okay, that's fine. I just wanted to make sure when I draft my message that I do it right. Okay, all right, thanks.
- Keith Drazek: All right, thanks Chuck, thanks very much. And appreciate you agreeing to be volunteering to do this. Yeah. Ken.
- Ken Stubbs: I hate to do this to you Cherie but I think we need to stretch the vote out as far as we can in the next 24 hours. I do not want to have a situation where somebody, because like they've been deprived in part of the world because of this. You know, I mean, if you send this out to the west coast of the United States, you're looking at, you know, eight to nine hours. I'm saying it should be at least six o'clock tomorrow night, at least. You know.
- Cherie Stubbs: Dublin time?
- Ken Stubbs: Yeah, well, I would say UTC, I'm just, whatever...
- Cherie Stubbs: UTC?
- Ken Stubbs: I think we need, you know, as long as it's reasonable for Keith and Donna and Rubens to be able to get the compilation.
- Keith Drazek: Yeah. Thanks Ken and Cherie.
- Cherie Stubbs: I think the vote is tomorrow.

- Keith Drazek: Yeah, the GNSO council vote is tomorrow afternoon. Remember...
- Cherie Stubbs: Six o'clock might be a little late.
- Keith Drazek: There's a part one meeting of the existing council, the outgoing council. There's a part two meeting, which is the seating of the new council and the vote. That starts at three o'clock, 3:15 it looks like, something like, it says three o'clock. So, let's have this finalized by 2 PM local time, whatever that is everywhere else, okay? Two PM here. How long does it actually take to complete a Survey Monkey survey analysis?
- Cherie Stubbs: Not long.
- Keith Drazek: All right. Two PM, that gives us an hour to make sure that if we have technical difficulties or something that we can manage it.
- Cherie Stubbs: My only comment is that eliminates one of two Guinness pints I was having tonight.
- Freida Tallon: I was just going to say that maybe the decision can be made, or conscience can be, can come from a pint of Guinness.
- Ken Stubbs: There's one other thing from a strategy standpoint, and I think we have to talk some strategy here. I think that the information should be kept really on the down-low after two o'clock, because that gives you guys the time you need but other constituencies hypothetically could change their votes based on what or how they knew you were voting.
- Keith Drazek: And it's a good point, it will be transparent but we'll keep it confidential until after the vote. So you'll see the results, you'll see our votes, and you'll know, and full disclosure, but not until after the vote's made. Jordyn?
- Jordyn Buchanan: Just one more question. Do we have a sense or do the counselors have a sense, will you guys talk to each other once you see the results to figure out how to interpret them, or are each of you going to make individual decisions?
- Keith Drazek: No, we will certainly coordinate. So I want to, okay, I think we've talked this through. I feel good about the decision that we've made under difficult circumstances. I hope everyone else agrees. I just want to ask, though, Rubens and Donna, as, Donna, thank you. Saw you missing, I panicked. I know. I just want to ask the other two incoming or Donna, seated counselor, Rubens other incoming counselor, if you have any feelings about this or if you feel like we're, you know, on solid ground as far as what we're going to have to do tomorrow. Okay. Rubens? Okay.
- All right, very good. So with that I'm going to, guess wrap things up, huh? All right. So all right, yeah, I know. You didn't make it easy. Maxim. Go ahead.

Maxim Alzoba: Last thing, note, just, actually would like someone to notify everybody officially that NTAG is no more, and TG is...

Woman: Not no more, just on hold until the next time, which could be...

Maxim Alzoba: And we'll have to drink to the memory...

Keith Drazek: The memory, yes, eventually. Thank you, Maxim. All right, thanks everybody, we're going to wrap this up. Thanks for everybody's input and patience today.

END