
ICANN74 | Policy Forum – ccNSO Governance Session
Wednesday, June 15, 2022 – 10:30 to 12:00 AMS

CLAUDIA RUIZ: Hello and welcome to the ccNSO Governance session. My name is Claudia Ruiz, and I, along with Bart Boswinkel, are the remote participation managers for this session. Please note that this session is being recorded and is governed by the ICANN expected standards of behavior.

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Thank you all very much. I will now hand the floor over to Sean Copeland. Thank you.

SEAN COPELAND: Good morning, everyone here and in this time zone, and good afternoon and evening to those of you who are coming in

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remotely. Off the top, if I speak too fast, please let me know. I can do that. I'd like to thank the support staff that have been here who have been doing a Herculean task throughout this conference. It is a lot going on, and it's pretty impressive to see. Please note that we've allocated time for questions and answers at different times in the presentation. Please leave them there to talk about.

The session is going to be divided into two sections. The first section is for us to introduce rule changes resulting from past policy adoptions by the ccNSO. And we hope that you see these as administrative changes that you have already approved. David is going to present this to you. The second half of the presentation will deal with the conflict of interest. And it is also going to be divided into two parts. In the first part we're going to look at the work that has been done since ICANN73, where we heard you guys concerning the use of statements of interest and the volunteer community. The last part of today's session will be to seek your guidance on where we have determined we require a conflict-of-interest policy. And this is of course at the council level.

Next slide. We have much ground to cover today. And to help that, we will give practical examples to you. By all means, whatever your position is on governance, every single one of us here in the GRC would love your voice at the table.

With that, I would like to hand things over to David.

DAVID MCAULEY:

Hello, everybody. This is David McAuley speaking. Thank you very much, Sean. I am participating remotely and I would like to thank everybody both there and also participating remotely for attending this session. By the way, I should indicate that I am an employee of Verisign and I am a participant in the ccNSO by virtue of our management of the .cc country-code top-level domain. And I also participate in the GNSO. And I am a member of the Guidelines Review Committee. And in that membership, I served as a member of the subgroup that recently helped compile changes to the ccNSO rules—the first set of changes to the rules that we’ve done since 2004. And as we’ve worked on that and spoke to the community about that, we indicated that, as we were changing the rules, it would be in all likelihood that we would come back rather quickly with new changes to the rules due to changes in the bylaws. And that’s what we’re going to be speaking about.

On this slide, you can see the governance structure of the ccNSO and the hierarchy of sources of our governance. And at the top of that hierarchy are of course the ICANN bylaws, Article 10 and the annexes, that deal with the ccNSO and our participation in the Empowered Community and our role as a decisional participant therein. Immediately next in the order of precedence is the rules of the ccNSO membership. That is the rules that we just recently changed and also the rules in which we look to make some

additional changes based on developments coming our way. And the third in order of precedence is the operating procedures of the ccNSO. Under the bylaws, the ccNSO Council, in consultation with the membership, makes rules and procedures. And so the Guideline Review Committee obviously has interpreted this to be that both the council and members have a role in making any changes.

In this slide that's now on the screen, we see the reason for the coming changes in the bylaws. The Board has approved them in May, and those are out for action by the Empowered Community. And this is the bylaw change to take into account the ability to allow IDN ccTLD managers to become members of ccNSO, which under the previous bylaw, was simply not able to be done. Obviously, that needed to change.

Could we go to the next slide, please? So what we're talking about— we're doing a consultation here—is making administrative updates to the rules based on the change to the bylaws to allow IDN ccTLD managers to become members. We are going to be adding, to the glossary and the rules, two new terms that are very important. One is “representative.” As you can see here, each ccTLD manager can designate a person to be their representative. And the representative represents the manager and all things having to do with ccNSO. Under the new bylaw, if a representative is not designated, then the administrative contact in the IANA database will be the representative. The second new

important term is “emissary.” The representative of the ccTLD manager shall be that entity’s emissary. “Emissary” is an important term for purposes of voting, as we’ll see in the coming slides.

Next slide, please. So what we intend to do to [inaudible] in our administrative updates to the rules is to indicate that, in the rules, the electronic vote by members shall be reserved by emissary voting. Each emissary, regardless of the number of ccTLD managers within the territory, is entitled to cast a single vote. The one thing that we have to recognize under the bylaws is that, in a single territory, if there is more than one ccTLD manager, then they should consult and choose one emissary amongst them. And if they don’t do that, then the representative of the member who was longest-standing in the ccNSO will be deemed to be an emissary. “Emissary,” again, is important for purposes of casting the vote.

Next slide, please. For purposes of quorum, consistent with the changes that we just made to the rules, the quorum shall be at least 33%. Now it’ll be 33% of the total number of possible emissary votes in a particular case. And if quorum is not met, again, consistent with the new rules, there will be a second vote. And the second vote will only be valid if the quorum is met in that case.

Next slide, please. By the way, I would ask, if I'm speaking too quickly, please, Bart, if you would speak up and let me know. So with respect to those changes suggested so far, especially the important concept of "representative" and "emissary," it's now the time if there are any questions or comments. I can't see in the room, but I can see that there are now hands up. And so I think we can proceed, unless ... I would ask you, Bart, if you ...

BART BOSWINKEL: No questions. Please go ahead, David.

DAVID MCAULEY: Thank you. Next slide, please.

BART BOSWINKEL: Excuse me. There is one question from Leonid Todorov. Leonid?

LEONID TODOROV: Thank you. Good time of day. And hi, David. I'm just curious. How did you come to that 33% for the quorum? How did you calculate that figure? Thank you.

DAVID MCAULEY: Thank you, Leonid. That's an important change from the 2004 rules, and we adopted that in the recently-approved rules changes that we did. The quorum was becoming very difficult to

do, and we had a discussion about quorum. And that's a lower quorum than it was in the 2004 rules. And that is the number that we settled upon after fairly extensive discussions in the Rules Subgroup. And then that was taken both to council and to membership for approval, and it did gain approval. And so, again, just a thumbnail is that the quorum is 33% with a certain number of votes per Region 3. And if the quorum is not met in the first vote, then there'll be a second vote, at which time the quorum will still apply. And if it's not met the second time, then the status quo remains. Is that okay, Leonid?

LEONID TODOROV: Thank you.

DAVID MCAULEY: Thank you. Next slide, please. This is just a graphic indicating that, in a session like today, we will consult with membership. We will come up with changes to the rules. They will be taken to council for adoption, after which the members will again vote on them. And so that principle of having council act and members act is maintained.

Next slide, please. So we're going to talk now about the new rules and impacts on council election procedures.

Next slide, please. So the changes here, now that we have the concept of "representative" and "emissary," is with respect to

nominating individuals to ccNSO Council. Only the representative of a member is able to nominate and second candidates. A representative can self-nominate, but they would then a self-nomination would have to be seconded by two representatives from ccNSO members from different territories in the same region.

Next slide, please. And with respect to a call for nominations, again, a representative may nominate an individual. Nominations have to be seconded by representatives from a different territory in the same region. And again it's just underscoring that we need to make a change to this concept of "representative."

Next slide, please. With respect to elections, it's the same thing we're doing here. We're simply changing the rules to take into account this new concept of "emissary." And in the election, the majority of the emissaries in a region shall constitute a quorum. And the candidate in the region has to receive a plurality—not a majority; a plurality—of the votes cast by emissaries in that region.

Next slide, please. So with respect to making changes on the procedure for the council election, the word "decouple" here really gets to the concept that we are going to ... There used to be a hardwired requirement that the Q&A take place at the annual general meeting. That's actually going to change. There'll be

some more flexibility, but we will retain the Q&A session, preferably during the ICANN annual general meeting. And we will retain the concept of having the election process with all of the to's and fro's that the election process has complete well in time for persons to take seats in an orderly manner. And that's what that update is really about.

Next slide, please. Do we have any questions to this point?

I don't see any. Not hearing anything. So I think we can move on to the next slide. Nominating candidates to ICANN Board seats.

Next slide. We will have to have similar changes here to take into account the concepts of "representative" and "emissary." So each member through its rep can nominate or second a candidate to the ICANN Board. I'll go through this a little bit more in detail. If a member nominates a second candidate, only the first nomination is going to be valid by that ccNSO member. You can see under here the changes that we're going to do with respect to these nominations.

So we can go to the next slide, which is actually getting ... Here we're talking about the concept of timeline, and we're again underscoring that it's going to be the emissaries that are going to be casting the votes here. And the emissaries, as we said, will be representing the territory with one vote per territory, whether a ccTLD manager within the territory will ... They will have to take into account the appointment of the emissaries, as we just

mentioned. Here we get to the notion of plurality again, which is ... At the bottom, we indicate that, if the plurality is none of the above, then the vote would be terminated.

Next slide, please. Candidate statements related to taking the seat will preferably take place during the members meeting. But that is a preference, and that's a bit of a change. And we will indicate that in the new rules—and new procedure. Thank you.

Questions to this point? And I think, as you can see, all we're really doing is taking the recently adopted new rules and tweaking them to take into account these rather new concepts that we have as we bring IDN ccTLDs into the ability to participate as members.

Nick, I see your hand. Please go ahead.

NICK WENBAN-SMITH:

Hi, David. Thank you. Sorry, I may even put my video on. There you go. Obviously, the emissary concept ... I think I understand and I understand the requirement that essentially each territory essentially gets one participational vote in terms of the overall governance of the ccNSO, and that could obviously have a number of different ccTLDs because of the introduction of the IDN ccTLDs. So that seems sensible.

I suppose my question is ... I know some IDN ccTLD people. And usually it's the same person who has the ASCII ccTLD. And I just

wondered. If your formulation of all of this stuff, have you had any interaction with people who have different operators of an IDN ccTLD and the ASCII ccTLD to understand how operation, in practice, works for them? Because obviously for us, from my ccTLD, there's just one of us. So it's largely academic and theoretical. So I was wondering about the actual practical outreach for people who will have to deal with this in practice because I think I understand the theory—and it looks great—but I just wondered about the practical implications for people who actually have to deal with this stuff. And thankfully I'm not one of them, but I think it's important that those are the folks that have to deal with this, and therefore those are the folks that really need to understand it and to have their support. Thanks.

DAVID MCAULEY:

Thank you, Nick. We did not reach out formally in the Rules Committee or in the Guidelines Review Committee as we did this, but we do have members that are aware of these things. And so we are aware to some degree of some of the practical impact.

But on the other hand, a lot of the practical impact and the decisions regarding the impact will be made locally in those cases where there are more than one ccTLD manager per territory because they will have local discussions as they choose their emissary. And if they don't, there is a default position as to how

the emissary chosen—that is, the one of longest standing. But that’s our expectation.

So in other words, we did have some experience with this. We did not do a formal outreach, but we do expect the practical implications to be taken into account more particularly on a local setting. I hope that’s responsive.

And if there is anyone else here from the GRC that has a view on this, I would certainly welcome their input as well.

Is that helpful, Nick?

NICK WENBAN-SMITH: Yeah, that’s great. Thanks, David.

DAVID MCAULEY: Any other questions?

And I don’t see any. And so let’s go to the next slide. This is a graphic on changing the operating procedures. It’s not dissimilar to what we did before. So the councilor has the initiative[,] consultation with members [...]After adoption[,] the members weigh in with their voice, etc.

Next slide, please. I’m going to hand it back to Sean now.

SEAN COPELAND:

I'd like to thank you very much for that, David. And it's funny, given Nick's question, that we're now going over to the conflict of interest. Nick's question actually goes to the very esoteric version of conflict of interest when a new group is coming into an existing group, just out of observation.

Okay, next slide. We will look at what the CIO Subgroup has been up to since ICANN73, and I want to thank each member of the subgroup for their participation and especially accommodating my schedule. This community is spread out, and getting everyone together is no small feat. Thank you to our staff (Kimberly, Joke, and Bart), David, who stepped up to co-chair this subgroup, and each member—(Ajay, Tatiana, Nick, Nigel, Svitlana, and Jordan).

Looking at the roadmap. Okay. We started the process for the conflict of interest back in 2020. An issue came up that showed that there was a lack of a policy for dealing with conflict of interest. This was referred to the GRC, and we took it up fairly quickly, I hope, for your purposes. In ICANN73, we presented a flow of what we were looking at. And the feedback that we got from you guys was very clear: the volunteer community in and of itself required not a full conflict but a statement-of-interest-type process. We took that back. We've done some work on that, which Stephen will address shortly thereafter, and we also came to realize that the council itself required a conflict of interest regardless of the statement of interest. Our intent is to do this presentation here. We will improve the conflict of interest work

over the next few weeks and hopefully, in the middle of the summertime, we will do a presentation to you guys over Zoom, which I know you'll all enjoy, with the time that sometime in September we will get together in Kuala Lumpur and we will do this live with a more interactive presentation, if you will.

Next slide. Give me one second, you guys. I'm out of sync with the slides. Again, I want to remind everyone that we have broken this section into two parts. So the first part is the statement of interest, where we worked the most since ICANN73. The second part will deal with the conflict of interest.

Next slide. Building on ICANN73, a conflict-of-interest policy for volunteers on committees would be cumbersome at best. At the same time, it was clear that the community favored transparency and equity of standing. This is not surprising, as this community exhibits a tendency to these characteristics.

Next slide. Why then to encode them? How does this help transparency? The application of character does not happen evenly when we are left to our own devices. This is not to say we've been doing it wrong in the past—merely that we can and should do better. In this sense, the statement of interest allows everyone working around the table together to understand where everyone else is coming from. David is very kind to this community and provides us with the best example of how to give a living statement of interest, which you've already seen today. In

addition to any web-based disclosures on every single call, David exemplifies best practices here, and we have much to learn and emulate.

I want to turn the floor back over to David at this point.

DAVID MCAULEY:

Thank you very much, Sean. I just wanted to mention or give a little of my experience when it comes to statements of interest, and that's, I think, underscored by the fact that I participate also in the GNSO, in the Registry Stakeholder Group. And I have to come to value—very highly value—statements of interest. Sometimes, they can be not thought of very much because they're simply there in the background, but I participated in some really important groups, like the CCWG on Accountability (both workstreams). I participate in two IRP-related groups, as we do create rules for the new IRP and select members for a standing panel. I've participated in a working group where there's real commercial interest. That is the RPM PDP Working Group that are interested.

And what the statement of interest has come to mean to me is that all speakers, by designating where they're coming from and what their interests are, give to the listeners, to the other participants, a sense of where they're coming from. All of these interested that are being reflected are legitimate. I just have valued them wherever I've seen it. It just helps someone

understand and see where someone may be coming from. And it helps others when I speak to understand that I work at Verisign. I'm part of a registry operator. And there's nothing improper about it

But the other part of it, in addition to indicating where we're coming from, is that statements of interest are updated when changes occur. And that is another important. At the beginning of every meeting that I participated in that I just described, there's a question: are there any changes to the statement of interest? And that obligation to keep it current is very informative to the community. I have come to value it very highly. Thank you, Sean.

SEAN COPELAND:

You're welcome, David.

And now I would like to turn it over to Stephen to talk about SOI.

STEPHEN DEERHAKE:
there.

Thank you, Sean. Thank you also, David, for your testimonial there.

In a nutshell, it's all about transparency. Full stop. That's all we're trying to achieve here: transparency. And as David points out, there's nothing accusatory here. It is simply a matter of understanding where people are coming from with regards to their position on whatever topic is under discussion. If you played

at all in the GNSO space, you undoubtedly have a statement of interest. I do, dating back to the CCWG work some years back. It's not intrusive. It's just a matter of putting out there for others who may want to have a better understanding of you—particularly your professional life. That's basically what it's about.

In terms of definition, it applies to people working in “groups,” and that includes the council as a group, and any work team or working group PDP, any ad hoc subgroups that might be formed to look at some particular topic, etc., etc. And the feeling is, if you are participating in any of those groups or subgroups, etc., you should have an SOI on file on that. And again, the objective really is to just provide a means for other members of the community to get some sense of who you are professionally if you're participating in any work group or council proceeding, etc., etc. And, again, it's all about transparency.

Applicability basically is everybody who is in a working group. And there is a responsibility that you keep your SOI up to date. Having said that, I should go back and look at mine, actually, for the GNSO because I haven't looked at it in a long time, but nothing really has changed.

There will be exemptions. Staff members are exempt—ICANN staff members—as are their contractors. If a contractor is only part-time ICANN, then they are not exempt. There will be a reasonable timeline that would have to be adhered to get your

SOI in place if you do not have one and you volunteer for a working group or end up on council, etc., etc. And this will all be done electronically. It's going to be similar to, but probably not identical to, how the GNSO SOI form works now. And if someone is on a group and they don't fill out the form, eventually their continued participation would be called into question because of the lack of the SOI.

And that's pretty much it. We do have a poll question as to whether we're going in the right direction or not.

And any questions or comments?

I'm not seeing any in Zoom. I'm not seeing any in this room. I think, if that's the case, can we go to the poll question?

I don't see it.

JOKE BRAEKEN:

Stephen, this is Joke. Maybe we could refer people to the e-mail that was circulated on the ccNSO mailing list yesterday and earlier today. In that e-mail, there is a link to the Mentimeter poll. So please open that link and participate in the polling or scan the QR code attached to that e-mail. Thank you.

STEPHEN DEERHAKE:

Those of you in the ccNSO should have that e-mail, so you will have that link.

All right. We still got a couple coming in. Okay, I'm going to close the polling in about ten seconds.

BART BOSWINKEL: Stephen, we still see [polling] coming in, so we'll keep it open for a while.

STEPHEN DEERHAKE: Yeah, I'm just going to keep it open for a little bit longer, Bart, because I'm seeing that, too.

Okay, I think I'll close it at this point. It looks like it's pretty steady. As you see from the poll results before they went away, we have pretty good support, and nobody is objecting to it within our community. So that is good. Thank you for the support that we're going down the right path, it looks like. So if there are any more questions or comments—I don't see any in Zoom; I don't see any in—oh, I got one in the room. Yes, sir?

JAVIER RUA-JOVET: Hi. Just to comment, my prior community is ... I come the ALAC initially. And we're well accustomed there to conflict-of-interest procedures. They work very well. They have exactly what you say, Stephen: the effect of just everybody knowing where the other person stands. And it really helps out actually knowing the other

person and having valuable interactions from knowledge. So I just wanted to comment on that.

STEPHEN DEERHAKE: Thank you, sir.

Any other comments or questions?

Yes? I didn't see you.

CHRIS DISSPAIN: Hold up. At least I can put my video on. Hi, everybody. It's Chris Disspain. Difficult to know behind the mask. I just wanted to make the point that, on the statement-of-interest side of things, the days when you simply knew that you were dealing with a ccTLD manager who was a ccTLD manager for a ccTLD ... They're not here anymore because now we've got ccTLDs that run gTLDs. And so it's really important that everybody knows what it is that you are responsible for. You can't just assume that it is your ccTLD. And that's why the statement of interest is so much more important now that it used to be in the past. Thanks.

STEPHEN DEERHAKE: Thank you, Chris.

Not seeing anything more, Sean, I think I'll hand it back to you, sir.

SEAN COPELAND:

All right. I'm just curious if any of the people that were not sure would like to express why they were not sure.

No? All right. I'd like to thank Stephen and everyone who participated in the polling.

We can go onto the next slide. Sorry about that. We're going to turn over to the conflict of interest. And conflict of interest is about good governance in an organization. It is impacted upon and drawn upon ideas from philosophy, sociology, and psychology. So it's a little bit of a dark art. I want to say that, while we have asked people to bring real-world examples, sometimes by involvement, sometimes in self-evaluation, conflict of interest is as much and more based on emotion and perception. And what that means to people and how they look at the same situation can be entirely different as a result. Be respectful of the people that are going to give you their examples and their experiences. Keep in mind that conflict-of-interest policy keeps dialogue happening when things are difficult. Good governance needs transparency, and transparency needs discussion. We are adding a key foundational piece for this community for the future.

Next slide, please. Coming away from ICANN73, the vast number roles will be adequately dealt with by using an SOI. We also know that certain niche areas have COI. One is the Board nomination process, and the other is the only community group that deals

with any level of finance, which is the Travel Committee. In other areas, we fall very short. This means that we leave it up to the individuals to decide with no framework to help them. There can be consequences as a result that no one can anticipate. And I can ensure you from my own experience in other areas that are no winners when this happens. The lack of an existing policy has led to a perceived conflict of interest in 2020. Questions on choosing when to abstain from voting, wondering what the impact is when a vote includes you in it, have all been raised.

So to that, we've asked Adebiji, Chris, Nick, and Byron, and they've all agreed to explain how their thoughts on conflict of interest intercede. And they've all graciously agreed. So we'll start with the testimonials, if you don't mind.

So, the next slide. And we will start with Adebiji, who will do Chris, Nick, and then we will end with Byron. So over to you, Adebiji.

ADEBIYI OLADIPO:

Good morning, good afternoon, good evening, everyone, wherever you on the face of the globe. My name is Adebiji Oladipo. I'm a councilor and Vice-Chair of the ccNSO Council. My responsibility here today is to share my experience on conflicts of interest as it pertains to travel funding. When I initially joined the council, I had to apply for travel funding. I'm not sure what meeting it is now. And the first thing that came to my mind was, "Look, you can't be a member of the Travel Funding Committee

and, at the same time, be going to be the one that would be making a decision on your own funding. So what do I do?”

I consulted a couple of councilors to know exactly what the issues were and how to handle this kind of conflict. And the [address] I go to is, why don't you write to the policy advisors and find out what the rules were concerning this? And I wrote and I got from council, “Yes, you can apply, even if you are a member. However, you cannot be part of the decision as far as your own funding is concerned.” So I had to abstain from the decision when it came to that.

But my challenge is—now this is me talking—“Okay, I have applied for funding, and I've abstained from the process, but does that not put a heavy responsibility on the other people in the sense that they also recognize, “Okay, this is one of us.”?” Does it mean that we're going to deny him funding? So that's the responsibility that each individual would need to now come to terms with.

However, if we have certain rules that are explicit on guiding these kinds of conflicts, then it's a lot easier for people who are in such situation to be able to wade through it.

Something that I find really instructive is the fact that there's a scoring system for these kinds of applications. So far as that scoring was concerned in that example that I gave, I scored well on the skills. So ordinarily I was qualified for the funding, but that

also puts a lot of burden on both myself and also the other members of your committee in saying, “Oh, should we go ahead and give this guy funding or shouldn’t we?”

So my views would be, yes, the new [ISC] rules where the funding committee falls right now has made some conflict-of-interest things available. However, I still think we need to strengthen it so that people are taken away from dilemma and they’re able to carry out the responsibilities without any fear of conflict.

Sean?

SEAN COPELAND: Thank you for that.

Chris, would you like to take the floor?

CHRIS DISSPAIN: Thanks, Sean. So as Sean said, the difference between statement of interest and conflict of interest is effectively that statement of interest is a science. You write down what your job is and who you work for and what they do. And a conflict of interest is an art. And it’s all about a judgement, whether you think it’s a conflict or it’s not a conflict. And when I chaired the ICANN Board Governance Committee, obviously conflict of interest came up a lot, and it’s very much about the individual’s choice, unless their choice is so wrong that other people choose to step in.

So to give you some specific examples, when we ran the new gTLD process, obviously, if—so I obviously was working at Auda at the time—Auda had been involved in a new gTLD application, I would have had had a conflict and I would have not involved myself in that discussion. Equally, if the registry in Australia had been involved in a new gTLD application, that same thing would have applied because, even though I didn't work for the registry, we had a contractual relationship. Those two things are obvious.

But I took the view ... And I have always taken a very conservative view about conflict because it's not just about actual conflict. It's about perceived conflict. So what I did was to say, if there's anything to do with Australia, if it's any application from an Australian company, I won't involve myself in that discussion because I might know them, I might know who they are, and, more importantly, people outside might think that there is a conflict, even though there actually wasn't. Very, very, very few people have ever been criticized for taking a conservative view about conflict. Lots of people get criticized for not taking a conservative view. And abstaining from a vote is almost always better than voting, even if there is a perception of a conflict.

And so just as a final point, a real-life today example is, when the council ... I am the chosen nominee to represent ccNSO on the Nominating Committee next year. The council had to formally pass that vote. Frankly, it would have made no difference, really, whether I voted or didn't, but I felt that it was important that I

didn't vote. And so I abstained from that vote. And I would encourage anyone involved in any of these things to be really conservative and remember that it's much better to take a conservative view if you can. Thanks, Sean.

SEAN COPELAND: Thank you, Chris.

Nick, would you like to take the floor.

NICK WENBAN-SMITH: Yeah. Thank you very much. By way of introduction, I have put it on my Zoom name, but I'm from the .uk registry, [Nominet], and I should say that my role at the registry is general counsel. So I'm a professional lawyer by background. And so things like conflicts of interest are something which are of high interest to me professionally.

So I suppose my testimony on this is slightly different from Chris's, just to give a bit of a different view. I'm a member of the ccNSO Council, elected to the European region. I was going to say that there are various decisions that the council makes, and some of these are fairly rubberstamping-types of decisions. And there's no financial benefit, and there's not a competitive process. So, for example, appointments to the DNS Abuse Standing Committee is a council decision, and I participate in that as a councilor. But I'm also very interested in DNS abuse.

A situation was that I put myself forward for the DNS Abuse Standing Committee, which needs to be voted on by the council. So I had a very odd situation which was that I saw myself from the names of nominees, and I had to decide whether or not to vote for my appointment, to vote against my appointment, or to abstain from it. And that put me in a bit of a dilemma, I guess—“What’ll I do here?”—because I think it’s important that councilors do participate.

And my second dilemma also working for Nominet on the technical team, Brett Carr, who’s on the standing committee for the IANA and a very experienced DNS technician, was also on that. And he’s also employed by the same person that employs me. So arguably if it promotes my employer’s interests and I’m paid by my employer, then have a got a conflict of interest and should I recuse myself my from voting on both myself and for Brett?

And I guess I echo to a very high degree Chris’ comments about wanting to be quite conservative about, when you have an interest in a particular issue, to not appear to have too much influence over it.

But I guess I have a different perspective on this particular situation in that I think it’s really important that councilors exercise their duties as councilors to note wherever possibly firstly.

And secondly, I think—I'm just reflecting on Chris' Australian matters and, I think, on my earlier comment about the IDN ccTLDs as well—that you wouldn't want the very people who are most expert and knowledgeable about a particular topic to be excluded from voting or decision-making on that. They're the people who you really want to have on board.

So I do think it's important that you understand the statements of interest, where they're coming from, and their perspectives. And that goes into the mix. But I also think it's important, for the community, in terms of the quality of reflection, decision-making, and participation, that we include the people with the best expertise, even though they may have a direct interest in the outcome.

So I guess that's just my personal experience. I do agree with Chris that it comes down a lot to personal discretion and judgement to a degree, but I do think there are cases where, despite you having an interest, it's important that you do participate, making it very clear, obvious, what your interests are. And I guess that's just part of why I think it's a really interesting discussion and it's an important topic. Thank you very much.

CHRIS DISSPAIN:

Thanks, Nick. It's Chris. Sean just said I could respond. I just wanted to say I completely agree with you, and I do draw a distinction between leaving the room because you can't be

involved in the discussion, and voting. So at the end of the day, there is a distinction there. You can't stay in the room sometimes. You can be involved in the discussion, but you just don't vote. So I accept what you say. Thanks.

SEAN COPELAND: Nick, do you have anything further?

NICK WENBAN-SMITH: No. I think it's really important. And I think the most important thing is to socialize this and to talk about it openly because I think that is the best way to get people's input and participation. And this is an important topic which should be business as usual. Obviously, I didn't say it, but Nominet is also a gTLD operator. So there are some things there where I do participate in GNSO matters and I've got statements of interest on record. And I kind of assume, while everyone knows I'm Nick from Nominet, and that's what we do, I think it's really important that we build into our business-as-usual very like much like David does as a nature of habit now. And I'm not nearly as good as that about introducing yourself, explaining your employee, what your interests are, and having a standing item at the beginning of every meeting that we hold, [saying] statements of interest need to be updated or anything that people need to be aware of in terms of what participants are bringing into the room with them when they're actively participating in these areas. Thanks.

SEAN COPELAND: All right. Thank you very much, Nick.

Now I'm going to hand the floor over to Byron. Just before I do, I want to say Byron acted as a special magistrate, if you will—a special role as an ex officio—and he did that without a policy in place here. And I would hope that, going forward, any capital that was expended on Byron's behalf to do this is returned from the community. Thanks so much. And Byron, over to you.

BYRON HOLLAND: Thanks, Sean. And just so there's no confusion about who I am, I wore exactly the same thing as my headshot on the right. Wish I'd seen that picture before. But my socks are different.

Anyway, thank you for inviting me to this. Governance can sometimes be seen to be dry and boring. And, quite frankly, sometimes it is, but is incredibly important in a large community to understand the rules of the road and to have guardrails in place so that we all conduct ourselves based on a commonly understood set of principles. And as has already been mentioned, back in 2020, there was an event where we found ourselves without a map, without guardrails, trying to make decisions in the moment in an ad hoc way, which, for a complicated and diverse community wrestling with any number of issues, is clearly not the place we wanted to find ourselves. Governance is a journey. We

find ourselves at different points where we don't have what we need, and that can be okay, too. And then we can correct it, set the rules of the road that we agree on, and move forward, having learned. And I think that's where we are today. And that's the good news side of it.

But clearly at that point, we were missing rules—and on a very important issue: the nomination of one of our ccNSO members to the ICANN Board. There was raised the issue of a potential (or potential perceived) conflict. And not to get into the details, but that was the essence of the issue. And because we didn't have any rules, because there were not guardrails, in that moment we needed to create an ad hoc process. And just the selection of the person and trying to pull myself out of it ... We needed in that moment to find a person that we could all essentially trust that all parties involved in that were okay with. But that is not a good position for a community to be in because potentially that was a moment in time, and circumstances allowed for it. But that's not necessarily something that we could have relied on.

So the very essence of the process starts with trust. And fortunately in this community, we had high trust and we were able to move forward. But there's no guarantee of that. And that's one of the reasons why we need good governance in this space. And we were able to manage our way through then what was an ad hoc process because we had no rules. There was nothing to hang our governance hat on where we all knew what the process

would look like or we all knew why the issue of conflict, even though it was just perceived or even just potential perceived conflict, was even flagged.

So in that moment, we worked our way through the situation as a community, as a council in particular, where we had no rules to rely on. And that clearly is a community not where we want to be. But fortunately for us, there was enough trust and good will built up in this community that we were able to get through it. But we all drew down on our political capital, our social capital, our good will, and our trust. And again, that's not where we want to be as a community. We need clear rules, we need clear guidance, and we need clear understanding of people's interest, as we've just heard from the three previous speakers, and how that actually is good for all of us in the end.

We went through that process. We got through it. I'll say that not probably every decision was perfect. In a sense, you're in the moment. You're in ... The expression is the fog of war. But you're in the process. And only with the benefit of time and hindsight can you truly appreciate: was every decision made the right one, or could there have been a better one? And I'm sure there was some that could have been better. But at the moment, we worked our way through it, and we got through it. We got through it, but I think it's safe to say that it was very difficult for some people. Because of the nature of it, some of the process had to be, in a sense, behind closed doors to work our way through it, which was

very difficult for some of the people not there. And quite frankly, some people were hurt by it. And it was inappropriate and certainly, at the very least, very unfortunate.

But we did get through it. We made progress. And I think the good news here is that we've learned from it. We are here today talking about this because we learned where our shortcomings were, where we didn't have the rules that we all needed to rely on, and where didn't have the clarity and transparency that we all needed to rely on. And as I said, the good news is where here today to talk about that—and not just talk but act on that.

And just from a personal note, my organization has a robust governance process and a board of directors, and too went through a process not dissimilar from this in terms of instituting conflict of interest and statement of interest. And it's a challenge at first. It's a change. It feels awkward. People question why we have it. But then it just becomes part of the fabric of what we do. And it provides clarity, transparency, and trust for the people who have to go through those processes and the people around who rely on those processes.

So not having them where we were is not good for process. It wasn't good for the community. And it certainly was not good for the individuals in question. But as we move forward, as we learn, as we evolve, as we update, we are putting ourselves in a much better positions so that we don't ever have to go through

something like that again, which I certainly wish on the participants or the community.

So I'm very encouraged that we learned from that and are maturing and moving forward. thanks.

SEAN COPELAND:

Thank you so much, Byron.

I would like to now turn it over to David. The next slide.

DAVID MCAULEY:

Thanks, again, Sean. And hello again, everybody. So the next slide ... You'll see this chart. Let me explain the chart because we're going to do a poll around this to check how we're doing on thoughts on constructing a conflict-of-interest regiment. So the top line in blue is the decision area, and it basically lists decisions in which it's possible for a conflict-of-interest policy to apply. And you'll see those decisions are a selection of the chair or vice-chair of the councils—decisions having to do with respect to travel funding, appointment of people to working groups, etc., etc.—as you see across the top in blue.

The next line simply indicates councilor. In other words, we're looking at the COI (Conflict of Interest) policy applying to councilors. We did consider going beyond that.

We considered whether it should be applicable to ccTLD representatives, recalling that term we spoke about earlier: the new term for the person who represents the ccTLD manager with respect to the ccNSO. And we considered whether it should apply to various working group members. And we came down on the decision that it should apply to councilors alone.

And then the third row of the chart indicates what would be the impact of the conflict-of-interest policy on a councilor with respect to that decision.

And we did all of this keeping in mind that what we consider to be a material interest ... We saw material interests as being important and normally involving a financial element, but not necessarily—basically an important consideration that could make a difference in how someone treats what they want to do with respect to a decision on it.

So on the top row with respect to choosing a chair or vice-chair of the ccNSO Council, we felt that, if a councilor was a candidate for either of those positions, the impact of the conflict-of-interest policy would be that they would abstain from such a vote.

With respect to decisions having to do with travel funding, we looked at with respect to councilors who were either applying for travel funding or they have a material interest with a colleague that was doing so. And there we indicated that that would be a no vote. And you can read the chart just as well as I can with respect

to appointments to committees that have travel-funding candidacy would also result in a no vote. With respect to appointments to committees where travel funding was not involved, we thought it would be an abstention. On council decisions for council elections where the candidacy was involved, you can see we talked about abstention. We talked about recusal as being the impact of conflict-of-interest policy. When the councilor is acting on Board nomination (one of the two seats; 11 or 12) process, where the councilor is a candidate or has a material interest relationship with a colleague that is candidate, that would be to recuse. And then on appointment of working group members—this is something that Nick spoke about earlier—candidacy, we thought it would be an abstention.

These are our thoughts. Chris, I think, put his finger on it very well. The conflict-of-interest side of this discussion is more of an art than the SOI side. It involves judgement. And these decisions that we're making involve our judgment. We're bringing to you and we're going to do some polling.

And, Joke, and I will just ask you and Sean if this is an appropriate moment to bring up the next question. Or, if—I'm sorry. Chris has his hand up. Let's address Chris' question first before we get to the polling. Chris, go ahead, please.

CHRIS DISSPAIN: Hey, David. Good to see you. A question first and then perhaps a comment. David, what's the difference between abstaining and no vote?

DAVID MCAULEY: It's a slim one, and I'm going to ask Bart for his help. But an abstention is basically an abstention, but rendering a no vote is often times considered a statement of "I see nothing here that I want to vote for." I don't know if I'm explaining it well. Let's say that—

CHRIS DISSPAIN: Bart has got his microphone turned on, so maybe Bart might be able to help.

BART BOSWINKEL: Actually, there is no difference. Sorry, David. I was thinking about the real formal votes but not in this table. Abstention is you could say that you ... No, there's no real difference, effectively.

CHRIS DISSPAIN: Well, the only thing I can think of is if you're counting quorum and, if an abstention doesn't count towards quorum or other, abstention is effectively the same as a no because you need to get a certain number of yeses for something to pass. But let's not overcomplicate that. So if we are saying for the purposes for this

discussion that the things are the same—abstain and no vote is effectively the same—then I understand it.

My comment would be that I’m fine with this but I think it needs a little bit of work because I think there should be an additional line, which is, “can participate in the discussion or not.” See, I would argue that somebody standing for the chair or vice-chair should obviously be presenting to the council. But actually, when it comes to discussing the candidacy, especially if there is a competition, the people should not be involved in that discussion because it can chill the discussion if you have the person in the room.

So I just recommend that perhaps, after we get through this, we might want to do a little bit more work and talk about whether you should actually be in the room or not for the discussion.

BART BOSWINKEL:

And that was the intention of “recuse” that used that out-of-the-room as—

CHRIS DISSPAIN:

But there are certain circumstances, Bart, where you could still be in the room. So the travel funding, for example ... I’m only using it as example. You may be able to stay in the room. Or for appointment of committee members, you may be able to stay in the room rather than leaving the room. Leaving the room should

be only for very, very, very rare circumstances. And just because you're going to abstain on the vote shouldn't mean you have to leave the room. Thanks.

BART BOSWINKEL: That's why the only one in the table where you see a "recuse" is with the Board nominations.

CHRIS DISSPAIN: Well, in that case, if you're seeking to do that, then I think chair and vice-chair is the same.

BART BOSWINKEL: That's fine. Look, this was just a proposal for the subgroup—where you want to have this "recuse" or "abstain" or "no vote"—and that's up for discussion. But the mechanism is very clear: you have various ways of dealing with it.

DAVID MCAULEY: Thank you. Thanks, Bart. And thank you, Chris. I think that's valuable input. I don't think it will stop us for polling. I think we need to do the poll to see if we're on the right track, but I very much appreciate that and I know that the group will take that into consideration.

BART BOSWINKEL: David, there are some more hands up.

DAVID MCAULEY: I see that. I'm going to next to Tatiana.

TATIANA TROPINA: Thank you. Actually, Chris asked my question, but I missed the last meeting of the conflict-of-interest subgroup. I'm sorry. I would have supported it. For the life of me, I do not see the difference between abstain, no vote, and recuse. Like, zero. And if I do not see the difference, it means that this procedure is too complex. And if this procedure is too complex, then nobody will understand it

I think Chris pointed right here. It is not the difference between no vote, abstain, or recuse. It is the difference between taken part in the voting and taking part in discussions. So it should be it "recuse yourself from discussions" or "abstain from vote" or [inaudible]. This is where we can draw a clear difference. We can provide a clear explanation. Either you get yourself out completely or you get yourself out of the vote only. And I think this is easily fixable in terms of terms, but of course it has to be fine-tuned in relation to all these decisions. Thank you.

DAVID MCAULEY: Thank you, Tatiana. And I think, along Chris' comments, that's very helpful for our work as we go forward.

Before I go to Alejandra, I see a question from Peter in the chat. And I think we just answered that. So let's go to Alejandra. Peter, if I'm incorrect, please just let me know. Alejandra, over to you.

ALEJANDRA REYNOSO: Thank you very much, David. Well, what was discussed regarding these options is exactly what was said—if people could stay or not stay in the room for a discussion, for example. A no vote would be that you can stay in the room for discussion, but you do not participate in the actual decision of it. And recuse would that you cannot be in the conversation. So that's the main differences. And abstaining is, okay, you are participating in a way in the discussion as well, but you abstain yourself from deciding the point yourself.

DAVID MCAULEY: Excellent. Thank you, Alejandra. And I heard ... Does someone wish to speak?

CHRIS DISSPAIN: That was just me, David, just to say that what Alejandra said makes sense to me. So what you're saying is that recuse means you're out of the room. Abstain means you can discuss it but you

don't vote. And no vote means you don't discuss it, but you can stay in the room. Is that what you meant?

ALEJANDRA REYNOSO: No. No vote means you can discuss it. Just don't participate in the actual decision.

CHRIS DISSPAIN: Okay. So I would suggest that, given the confusion, we probably need to work on the wording. But I get the essence of it.

ALEJANDRA REYNOSO: It will go back to [inaudible]

CHRIS DISSPAIN: Exactly. Okay, thanks.

ALEJANDRA REYNOSO: Thank you.

DAVID MCAULEY: Thank you both. And as Sean said in chat, this is aspirational. So we do have more work to do on this, and I would ask Joke if you could be sure and capture the comments in chat too that will also help us in this discussion.

So I think it's an appropriate time to go to the polling just to tell us if we're heading in the right direction because I know a lot of people have not spoken on this.

So, Joke, I'm going to turn it over to you if I could.

JOKE BRAEKEN:

Thanks, David.

So the link to the Mentimeter poll is the same one as the one that we used before. I've reset the results. So if you voted before, please make sure that your vote is captured now in what you see on the screen. Thank you.

DAVID MCAULEY:

Thank you, Joke. And I will leave it to you, Joke, to figure out the timing. I think there's some dynamics in the room that I simply won't be aware of.

BART BOSWINKEL:

People are still voting, David. Just to make clear, this is the temperature of the room. There's no vote in support or anything of the procedure as proposed. It is just if the subgroup is on the right track.

DAVID MCAULEY: Bart, it looks to me like it may be in a steady state now, so I'll leave it up to you as to when to close, and then I'll turn it back to Sean.

BART BOSWINKEL: Just for the record, 17 support, and three are not sure.

And one of the comments in the chat was from Jordan. I'll read it out, and some others as well. "Uneasy with some of the details but support the direction of [inaudible]—so the overarching approach." And as I said, this is not about supporting the details. That's why we didn't present them. And it is very clear that further work is needed.

Back to you, David.

DAVID MCAULEY: Thank you, Bart. I believe that we can close work on this particular slide.

Next slide. If there's any questions on this or overall, I'm happy to entertain them.

And I don't see any hands and don't hear anyone.

So if I'm not mistaken, Sean, I should hand it back to you.

SEAN COPELAND: Thank you so much, David.

So thank you, everyone. On behalf of the subgroup, I would like to thank Adebisi, Chris, Nick, and Byron. I'd like to thank David and Stephen for their help in their help in the presenting. And [to] Ajay. He was [the one who made the] slides. And again to Bart, Kimberly, Joke, and Claudia and the people that are behind the curtain that I do not know who make us look really great. And none of this would be possible without ... I know they do a lot of us, but it can't be said enough. I had no idea of the commitment and dedication these people have to our community, and we should be thankful. I'd also like to thank again the remaining members of the COI Subgroup—Tatiana, Nick, Nigel, Svitlana and Jordan. Your contributions to this community and this group in particular are greatly appreciated, especially by myself.

With that, I would like to yield back your time for the rest of the day. Thanks so much.

[END OF TRANSCRIPTION]