

...and would come from the registrar side, whereas a chair candidate would come from the registry side. I think that might be a better way of categorizing that consensus.

Male: Can I respond on the one thing? Let me go through this process real quickly to let you know what the frustration is. First of all, I defy anybody in this room to give me a clear definition exactly how the voting works for a vice chair. The voting for a vice chair was never really decided. On one case, we have a situation where a chair requires a 60% majority of both houses in order to be elected. But, how do you elect a vice chair between two stakeholder groups? We do not have clarity on that.

What is the role? I'm going to make a recommendation at some point in time where we look very closely at the voting role of the non-commercial representative in a situation like that, because I would hate to get into a situation in the future where we're electing a representative from the stakeholders and the person who casts the tiebreaking vote is not a stakeholder, but rather, a non-commercial appointee.

Male: You mean Nom-Com.

Male: Nom-com, excuse.

Jeff Newman: (1:15 unintelligible).

Male: Well, the problem is you talked about it, and the only problem is, is it codified somewhere so we can go look and see. No offense Jeff. I don't mean it – I know that was part of the problem and that is all we could talk about it because we were not clear guidelines as far as I know.

Male: No, it's up to the house to determine its own rules with respect to the election of the vice chair and the role the Nominating Committee member. At the meeting on Saturday – sorry, getting days messed up – at the meeting on Saturday, it was decided that we did not want the Nominating Committee member to break the tie, that it was to be a house decision excluding the Nominating Committee member, that it was supposed to be 60% of the votes of the house of the Council members of the house.

David Maher: I don't think we got quite that far. It was really superseded by the deal that was made outside the room, but again, that's ancient history now. Any other discussion on this?

Male: Thanks very much for letting me come and I don't want to drag it out, because I know we have a long agenda. But, I do appreciate the chance to get some clarification there.

Male: Just a quick comment. I think, David, your observation is correct. I don't think we actually – we started with a discussion of how we would do the elections, but I think the registrars came up and said if we both have to agree, then we might as well just focus on the candidate rather than the process. And, that was what led to the sort of deal, if you will.

Chuck Gomes: One of the things that would be helpful going forward is, and the Council did make a decision to leave it up to the houses as to how this would happen. Now, at the time, I'm one of them that thought that was the better approach not to have the Council tell us how to do it, but rather, to let the houses decide. If people think differently, the Council can ask the work team that raised chairing to come up with some procedures that the houses would use.

All I'm asking for here is feedback. Was that a good decision to leave it up to the houses regardless of the awkward circumstances that ended up this time around?

Male: Can I respond Chuck, very quickly? I don't think that was a bad decision, but it's kind of like okay, you guys leave it up to your self to decide. We need to know in three minutes.

What they were asking us to do was something that did not allow us adequate time to create a deliberative process for doing it. Poor Jeff and David, and those guys were forced into a situation where they had to make a decision on the fly right there in a situation just trying to get through the process. That's what's so frustrating to me about something like this.

So, I think that what we need to do is we need to get the houses together, clarify the process, get it codified, lay it out, and from there on down, we can do this so we don't end up in a situation where any discussion gets somewhat tainted by the expediency. That creating a sense of urgency is not good in this process.

Chuck Gomes: So, it would be really good David, if it our joint meeting with the registrars later today, if we at least put this item on them. We don't have to resolve it today, but maybe, to map out a process where we would develop this

process and have it done relatively soon so we don't end up in the same situation a year from now.

David Maher: Good idea. Thank you.

I think we've probably....

Male: So, what – do we broach the subject on the "deal" later on or is there some agenda item to talk about?

David Maher: Well, the agenda item now, if someone would make a motion that we ratify the understanding reached on Saturday, we could...

Male: (5:30 unintelligible).

Male: Let me restate the full understanding of Saturday, because I think we only got to part of it. The full understanding of what we agreed to on Saturday was that the registrars would vote to support Chuck for chair if we were to vote for Stephane for vice chair. And if, for whatever reason – and then Chuck could talk about the procedure at the Council level – but if for whatever reason Chuck was unable to get elected by the Council through that procedure, then we would support Stephane for chair if he were to run. And then of course, we'd have to figure out the vice chair if he got the vice chair. So, that's the full deal that we struck.

Now, Chuck, as far as I understand it, at the Council level, you would have to get 60% of both sides of the contracted party house and the non-contracted party house in order to be elected. If neither candidate, neither you nor Olga got 60% of both houses, then the person who got the most votes would then go against none of the above. In other words, if Chuck got all of our house and a couple of votes of the other house, then Chuck would be the leading candidate even if he didn't get 60% of the other house. And then the choice would be to the entire Council, is it Chuck or none of the above.

If none of the above wins, then it's possible that there's another election or I guess the Council could chose that the two vice chairs run the Council. Is that correct?

Chuck Gomes: Yes, you did a very good job on that. And the intent was is that the two vice chairs – and this is part of the problem with the whole process. I

understand I brought up the problem of electing vice chairs before chair long before we even finished the process. It's very awkward.

But, the idea was if here in Seoul we're unable to elect a chair – now, the first understanding is that **Avry** would continue until Friday being chair if that was the case, and then after that, the two vice chairs would be co-chairs until such time as we elect a chair.

Male: Any questions on that deal – problems, issues...? And let me just state for the record, I don't think we had much of a choice here. I wish we had more of a choice. I think one of the things that I brought up to the operations committee group with Ray, and he'll talk about that later, was that there should be an option in the future not to necessarily have the Council chair be a member of the Council. And Ray will address that.

But, I think there's other – unfortunately, in this particular situation, we really were left without a choice. If we didn't agree to this deal, then they would not support Chuck for chair and we would have been in a very awkward situation at a house stalemate unable to elect either a vice chair or a chair. And, I think there are a number of people in this community that want nothing better than to shoot down the entire bicameral nature of the Council, and a failure of the very first action of the bicameral structure would not look good to anyone in the ICANN community and would just give more ammunition.

So, I really felt personally – and we did have a quorum of registries there – I felt personally, we really had no other choice. And, I think this is a good outcome because I think we can get Chuck elected as chair, which frankly, is the one thing that we really – that was the most important thing to us.

David Maher: Could we have a motion for an elected or for a ratification vote?

Male: I'll make the motion.

David Maher: Second.

Okay, I'll go down the list alphabetically by registry, and I believe the vote should be yes to ratify or no not to ratify. Dot biz...

Male: Yes.

David Maher: Dot com, dot net, dot name...

Male: Yes.

David Maher: Dot info...

Male: Yes.

David Maher: Dot org...Yes. Dot pro...

Female: Yes.

David Maher: Dot museum...

Male: Yes.

David Maher: Dot coop...

Female: Yes.

David Maher: Dot arrow...

This is not necessarily alphabetic I now see. Sorry. I'm reading from my list.

Dot jobs...

Male: Yes.

David Maher: Dot mobi....

Female: Yes.

David Maher: Dot cap...

Male: Yes.

David Maher: Dot travel...

Male: Yes.

David Maher: Dot tell...

Male: Yes.

David Maher: Dot Asia...

Male: Yes.

David Maher: Well, it's unanimous. This will certainly make the registrars very happy.

**Mike:** David, may I say something?

David Maher: Yes please, go ahead.

**Mike:** Thank you. Totally tangential to the business you've just conducted, I would just like to let you know that on the Board itself, we were under pressure to get some things done rather quickly so that the GNSO Council could be seated here. And there are probably a variety of reasons behind that, not the least of which the SIC Chair is dropping off the Board and I think wanted to get things done on his watch. But, there were probably other reasons too.

I think we had committed as a Board to get this thing done and not keep postponing and postponing and postponing it. So, in our Board discussions, there were other matters having nothing to do with what you were just voting on, but other matters entirely that we had to rush through and probably make some compromises on our own. But thank you very much for having at least figured a way to get this thing done. It'd be much appreciated and I'll try and report that back to the Board.

Thank you.

David Maher: You're very welcome Mike. We appreciate that comment.

Male: And just a suggestion. Somebody had probably ought to communicate to the registrars. You think it's...

(12:00 Crosstalk)

Chuck Gomes: I was just going to make a motion that we authorize the chairman of the Registry Constituency to communicate that the registrars and also indicate that the support for the referendum was unanimous. I think it's helps the two organizations to know that we are moving forward.

Male: Yes, and if they're doing like us and covering this early in the day, it would probably be helpful if they knew that as soon as possible, David. So you could maybe delegate somebody to communicate.

David Maher: I'll just send a short message to Mason right away.

Okay, moving on the agenda then. The DAG Version 3 is Number 1. The view of the DAG, I think what we have to decide is proceeding on filing comments, which are due November 22. Any comments on that?

Male: Sure. We talked about some of the comments that the Registry Stakeholder Group is going to file. It was a fairly small group. Jeff and I think it was Vladimir and Caroline, so we went through the registry agreement in particular. Each of the items that we believed were appropriate for commenting, big ticket times.

There are a couple of exclusions to that. The vertical integration question requires a little bit of separate discussion, and also the IRT question, the intellectual property portion. Jeff, as we discussed in the last Stakeholder Group meeting, Jeff is going to work on comments for that. I will prepare the draft comments as with the last version of the DAG.

I think a couple of the really big ticket items that everybody ought to know about, the unilateral ability by ICANN to amend the Registry Agreement. They tried to contain it slightly, but for the most part, ICANN can amend virtually any provision in the contract. That is it's unprecedented in general commercial contracting and contracting by private parties and I think not only are the registries keenly interested in that, because it really evidences that there's not meeting of the minds if one party can decide to change terms. I think it's a point that the registrars would really want to know, because if ICANN can unilaterally amend this contract, what's to say that it will stop there?

Of course, also, anybody who's applying for new gTLDs would be very interested that the deal that they strike and the investment backing that they get and so forth when arriving at this contract, the contract can be unilaterally changed.

So, I think it actually puts the bottom up process at risk as well if you have ICANN with the ability to just push down "these are the changes that we're going to make." So, I think that particular point, it's buried in all of

this because when you print out the DAG, you don't even see the Registry Agreement. I think a lot of the folks outside of this house may not have even known that that provision was in there. But, I think it's behooves us to make this point known to everybody in the ICANN community.

Jeff.

Jeff Newman: Yes. It's my understanding that Kurt maybe coming in at like 10:00, 10:15. Or sorry, 10:30. Thanks.

I think if you want to go through some of the issues, I think these are good ones to go through while Kurt's here, so I'm writing them down up there. So, I have unilateral ability for ICANN to amend the agreement. And maybe, if we just jot some of those down and then make sure we cover those with Kurt while he's here.

Male: Absolutely, and I'll just hit a couple other highlights, because not everybody was able to participate in that meeting.

The consensus policy process, we made comments in the last DAG that the definitions of security and stability and the other things that influence consensus policy should be strict and buttoned down. That did not happen. In fact, they do have an amendment or the unilateral ability to amend even what is contained within consensus policies.

So, if the beauty of this contracting scheme had been a level of certainty that these contracts with the registries were buttoned down but there's still enough flexibility within the consensus policy process to make urgent and necessary changes, that the kinds of things that are found in the DAG right now put that whole scheme at great risk.

I have another point, which we have heard a lot that ICANN plans to stay in the United States. They plan to stay in California. It's in the affirmation of commitments. We did successfully get them to put a rep in warranty in the Registry Agreement that they will remain a California non-profit corporation. But, it's also concerning to me that there is assignment language that allows ICANN to assign to a subsidiary, and when we specifically asked that that ability was conditioned upon it being within the United States, that language was specifically not included. So, I think that's also appropriate to ask them if they mean what they say.

David Maher: Thank you. Anyone else?

Well, we have some first drafts. Chuck has very kindly annotated the comments that we did on DAG Version 2 and I think we can work on those by email.

Chuck Gomes: Sure. And in fact, I'm willing to turn what I did already into some draft comments. I'd love it if one or two other people would work with me on that so that there's a couple, and then we can put them forward to the whole constituency if there's anybody that wants to do that with me. David...okay. And Ray, and Jeff.

And, we're talking now about Modules 1 through 4. So, let me write down those so I don't forget them. So, I've got David and Jeff, and Michael and Ray. Did I miss anybody?

Male: Can I, while you're writing that down – just one more note on the legal agreement that troubled me a little bit was if you compare the representations made by ICANN in the ccTLD Fast-Track Agreements, the four types, and the agreements for the gTLDs, the amount of commitments and obligations that ICANN has given itself in this ccTLD Fast Track is tremendously greater than the amount of commitments that they make to the gTLDs.

There are a whole a bunch of things in the ccTLD agreement that ICANN reps and warrants about its IANA function and about making changes within a reasonable period of time that it makes to the ccTLDs that it simply has not made to the gTLDs. And, I think that is fundamentally unfair and I would like ICANN staff, maybe even legal counsel, to explain to us why the ccTLDs are owed a greater duty of obligation than the gTLDs.

Chuck Gomes: And just to add – while we're funding the ccTLDs.

David Maher: Okay. I think we can move along then. The topics on the agenda, vertical integration rights, protection, other issues, is I think we've covered unless anyone has something to say specifically.

Male: I think we've covered about all of them.

David Maher: Well, they're covered in the comments that the draft that Chuck has already sent around.

Male: Well, maybe I'll ask a different way. Are there issues we want to discuss with Kurt while he's here on those topics, since this is the only time we'll have that chance?

Male: It seems to me that with vertical integration, we still need to get a clear sense as to the process, how they are coming up with the final options, whether there are going to be additional economic studies. Kurt yesterday in the session said that the timing was still not necessarily buttoned down, but I think we should know the process that they used to make the decisions as to which of the models they want to go with.

David Maher: I think we've already heard a great deal in the meetings prior to this one as to what the ICANN staff has done. I'm an alternate in the IRT and attended the IRT meeting. Jeff was there also. But, what struck me is that the ICANN staff is really ignoring a large number of serious arguments that have been made not just by us but by everyone else.

In the IRT case, they – and the parallel is in the vertical integration – arguments that were made ICANN simply ignored without any explanation as to why they were ignored or left out of their proposals. We can keep asking them and I think we should ask them, but I'm not optimistic about getting answers.

Male: Thank you David. We've gotten vertical integration, everybody's talking about that related to the new gTLDs, but it's standing issue. That's the same issue we've got in the existing gTLDs, the small ones and I think that we, as a group, should also address that, besides dealing that with the new TLDs too.

David Maher: Thank you. Edmond...

Edmond Chung: On that particular point, yes, I think that it's quite an important point in our agreement. And I think in the later agreements, I don't know whether the earlier agreements are, we are supposed to become similar with the newer agreements that will be used for comparable TLDs or something like that. So, what is going to be in the new one would eventually get its way into our agreements?

David Maher: Thanks. Anyone else? If not, I think we can move along to the IDN gTLD implementation, the question of the ccTLD Fast Track implementation plan, which has been issues in final form. And, at the least the plan

appears to be that as of November 16, the ccTLD will be able to proceed with their plans to have IDN ccTLDs.

Wolfgang Kleinwächter has joined us. I had invited him as the chair of the Nominating Committee. If he can give us a couple more minutes, we'll – thanks.

I think probably the most interesting thing to me that came out of the new gTLD discussion yesterday, next to the fact that the schedule has been put off indefinitely. But the comments made by Thomas Narten about root zone scaling is going to have an enormous impact on the way the new TLDs of any kind are introduced into the root.

According to Norton, and I gather there's considerable support for this in the technical community, the engineers are comfortable with the idea of 100 new top level domains introduced into the root per year. They are less comfortable with any greater number, although, it's not an exact number; it's a question of engineering judgment and testing as time goes on as new TLDs are put in the existing root zone file.

What this means for us is that very likely, the country codes will fill up all those slots. There could easily be 100 IDN ccTLDs. That means that the gTLDs are put off God knows when.

The other thing that was said, which I think may affect our deliberations here, the word "categorization" was used. And as I understand it, it means that ICANN has made a mistake by putting together a Draft Applicant Guidebook, the DAG, that purports to cover everything from dot sports, dot music, various generic terms, down to city applications, regional applications, sponsored groups that may be quite small, brand name top level domains, which present often, very different problems. At least in some cases, there are no trademark problems. The IRT issues are not relevant. It may also affect the root zone scaling. If a domain is applied for that's only going to have 100 registrants, that may have an impact on the scaling issue.

So, we have a lot of problems and I'm happy to hear anyone's proposal for solutions.

Male:

I'm not proposing a solution. There's just one additional degree of complexity to this that we probably want to start considering and that's public banks.

Male: Yes. Well, the next thing that happens is a bunch of IDN-labeled TLDs are created. And if what we want to do is nudge the discussion from that attaching to the cc realm to the process of adding new TLDs, attaching to the g realm, we might want to start thinking about Vanguarding what we want to do with IDN labels. Because, the impact of IDN labels is going to be the next big thing to evaluate, and if anything's got the technical community jittery, it's that.

Thomas was very careful to label that 100 number as his suspicion about what would not trigger anybody's uncomfortably alarms, but that was a pure guess. I think that the technical community is far more interested to see what happens with IDN TLDs, not too concerned about the number but the thing itself. And, if we want to latch onto that, we might want to suggest that it would be a very useful thing to have a couple of thusly-labeled gTLDs labeled there as well.

David Maher: Thank you. I think this may be a good time to bring in the item on our agenda, the Joint ccNSO GNSO IDN Working Group, the JIG.

Edmon is anything going on with that?

Edmon Chung: Sure. I wanted to come back to Kerry's point, but I'll talk a little bit about the joint group first. The joint IDN group essentially, the JIG, the charter was drafted and actually passed by both the GNSO Council and the CCNSO Council where each side, each SO is supposed to nominate five members into the group, the joint group. And the GNSO has already nominated five members into it.

The CCNSO is having a little bit of problem nominating five members into it, but I understand that they should have reached agreement and will be doing so formally in their Council meeting this week so that the JIG can get started.

The JIG however has sort of a natural end to it when either the ccTLD, IDN Fast Track or the new gTLD process was adopted by the Board, and it seems imminent that the Board would adopt the IDN ccTLD Fast Track. So in the ccNSO GNSO lunch, we did discuss that and there is agreement between the two Council, I believe, to extend the life of the JIG so that it could actually start.

The main item of discussion was to talk about items of common interests on IDNs between gTLDs and ccTLDs, and there were a few items that were identified, one more prominent and one is the handling of variants in the root. That is likely going to be one of the most important discussions for the group. We know that there is an implementation team put together by staff on that particular issue, and it's from indications from people from that team. It seems like certain issues about variants will be handed back to the two councils to deliberate on and the Joint Group may be a good place for that to be discussed.

David Maher: Thank you. It's 10:00. We invited both Wolfgang Kleinwächter the Chair of the Nominating Committee to talk to us about the selection of nominating committee members. Wolfgang, would you like to introduce yourself?

Male: I have a comment on this subject when we get back to the agenda.

Wolfgang Kleinwächter: Okay, thank you very much. Thank you David for your invitation. I have to be clear that the 2010 Non-Com starts on Friday officially after the end of the Board meeting.

So, I had a discussion with Trisha Drakes, which is the Chair of the 2009 Nom-Com that officially she is the Chair at the moment. And my discussions here is informal discussions, so I...

David Maher: Chair to be.

Wolfgang Kleinwächter: Yes. I cannot act yet as Chair, because my term starts on Friday afternoon. So anyhow, you know, one of these complicated procedural points sometimes you have in this family here.

Anyhow, you are quite familiar with the Nomination Committee. The procedure is well known that the Nomination Committee has to select every year a number of people for the Council, the CCNSO Council, the GNSO Council, for the At Large Advisory Committee, and first of all, for the Board.

This year, we have to select three members for the Board. This year means 2010. We have to select three members for the Board, one for the CNSO Council, one for the GNSO Council and two for the At Large Advisory Committee. The procedure is also well known and established over the last years.

The work of the Nomination Committee has three phases. The first phase is an outreach phase where we publish a statement, a call for a statement of interest and candidates send in a statement of interest plus some references. This will lead us into early April, so the deadline will be probably April 1 for sending in a statement of interest.

Then Phase 2 starts. Phase 2 is the evaluation so that the members of the Nomination Committee, we have 15 voting members and 6 non-voting members in the Nomination Committee coming from all constituencies of the various ICANN groups. And, in the evaluation process, we will trim down the number of candidates, probably between 60 and 80 – this was the average in the last couple of years – down to about 20 or 15 and then start the selection phase, the final phase, which will take place after the Brussels meeting in June. Then we have to select the candidates.

What I want to say here is please help us with outreach, because you know people best who would be good candidates, who would be good Board members in the future, good Council members in the future. So, use your personal contacts. Use your mailing lists you are in. Use your blogs you're writing to advertise that there is a possibility to apply for such a position within ICANN. And, ICANN is as strong as the people who are leading the corporation, and if we have good candidates, then we can select good leaders of the corporation. If we have bad candidates, then it's bad for the corporation. So that means it's up to the community itself to look for the best people we can get so that ICANN gets better year by year, also, while the people who are selected by the Nomination Committee.

As you know, if it comes to the councils and Boards, the Nomination Committee is only one channel to get the position. The Board has now 16 voting members. Six are coming via the supporting organizations. One is the CEO. One is the new At Large representative in the Board who the status was changed from a non-voting liaison now to a voting member, just recently, or this will start with the end of the Seoul meeting. And the Nomination Committee selects eight, so that's a big portion, and so far, the Nomination Committee has heard (36:18 unintelligible).

If it comes to the Council (unintelligible) reform of the GNSO Council, I think this is in particular your interest will also affect the work of the Nomination Committee. My understanding from this is that in the period of a couple of years, we select always one Council member, and in the

new composition now, there will be two nomination committee Council members in the GNSO Council with voting power, and the third one will have non-voting power sitting in the two houses. So, this is what I am interested to get also from you some instructions what you as members of the Council or members of the constituency, what do you expect whom we should send to the GNSO Council. So, this is an orientation.

The Nomination Committee is totally independent. We take one vote. All kinds of advices. We consult with the community, but we cannot take orders if in the CEO of ICANN or a government or nobody can give an order to the Nomination Committee. So, it's up to 15 voting members of the Nomination Committee themselves to make a final decision.

But on the other hand, it's very important to listen to everybody to consult with the constituencies and to hear what your expectations, and I will transfer this to the members of the Nom-Com when we have our kick-start meeting on Friday afternoon.

Thank you.

David Maher: Thanks very much. Any comment? Jeff.

Male: (37:57 Unintelligible) clarification.

David Maher: Please.

Male: Just one clarification. You said that the At Large representative to the Board would become voting by the end of Seoul. That is not the case. The Board has made a decision in principle that the ALAC liaison arrangement should be replaced with a voting director that is not currently in the bylaws that needs to turn into a bylaw. And that is not on the schedule for this meeting.

Wolfgang Kleinwächter: So, we have to wait for another couple of months.

David Maher: Thanks.

Wolfgang Kleinwächter: At the end of the day, this will happen.

David Maher: Jeff, go ahead.

Jeff Newman: Thank you for coming and helping us understand that. One of the discussions that the Stakeholder Group has had – I've got to get used to saying that – has been our disappointment with the selection – and this is not the first time – but the selection of ccTLDs to serve on the GNSO Council.

To us, you have to understand, at least from a registry perspective, we view a lot of them and they view us as competitors, as natural competitors. And for issues like we have at the Council, such as some that Edmon are discussion, or ones that were discussed over the last year, which is how we felt about an IDN Fast Track when the gTLDs were kind of left behind, those types of discussions, it's not very comfortable for us to have those discussions with the ccTLDs much less have a ccTLD on the Council with an actual vote to determine the outcome.

In this case, for the last year, the ccTLD rep that was chosen happened to be a fairly controversial rep – and I'm trying again not to get this personal – but the rep that was selected has been one that has been an outward critic of ICANN for a number of years, has been one that – I think I'm trying to put this diplomatically – basically threatened to walk out if ICANN didn't adopt the ccTLD Fast Track.

So obviously, it came in with a lot of preconceived notions, yet that person is selected to be on the GNSO Council. And I want to know if we can develop something over the next year to make sure that those types of things are considered. And, I know we have one rep to the Nominating Committee, but I just think that that one rep to the committee shouldn't even be put into a position to be forced to select from a candidate that is a ccTLD on the GNSO Council. And I know that the Nominating Committee had selected a GNSO – if they had selected someone like me for example for the ccNSO Council...well, I guess I'm a bad example, because we do have a ccTLD.

But, let's say it was Chuck. The point is, if they were to select a gTLD registry to be on the ccNSO, I could bet the amount of outrage would be a lot more than what you are hearing right now.

Wolfgang Kleinwächter: Okay Jeff. I know the name. I know the case. And, it was not under my Chairmanship. It was the other Nomination Committee who selected a candidate.

My understanding from the role of the GNSO Council member nominated by or selected by the Nomination Committee is that he could be a person who has a more holistic approach to the issue, not representing a very special constituency, as is the case in this one case you referred to. So, probably a person who would come from let's say a more academic background or a person who has a broader overview, and could be in the Council, also a reference person. Because, not just a person who represents a very narrow defined interest, because you have the constituencies in the GNSO and they nominate their representatives of their special interests to the Council.

So that means the Nomination Committee should not just add another person from a certain constituency to the Council as such, so looking for a person with a broader perspective, but this theory. In practice, we have to look what are the names which are on the table, and then we have to take into consideration what you have just said, and I would be happy to have another round of consultation if we have names there - you know this is confidential, we cannot talk about names. That confidentially, it's not a conspiracy. It's to protect the candidates because there's a difference between election and selection.

Election is you have to disclose. You have to make the campaign. But selection, it's different, so it means in election, you lose; in a selection, you do not lose. You are not selected. So, I think this is different. That's why we have to confidentially, in the process to protect the candidate.

But anyhow, we can have an ongoing discussion on it as soon as we have an overview, who are the candidates for the GNSO Council, that we'll talk a little bit about the principles. So, transparency and openness can be about the procedures and the principles, and I'm very happy to take all this advice you just offered to the Nomination Committee.

Jeff Newman:

Yes, in fact, I appreciate that. It is the principle. I don't mean to make it about the person, but actually, in this case, two out of the three Nominating Committee reps on the Council, voting reps, have relationships with ccTLDs. Even Olga provides services to ccTLDs. She has for years. She's been an advisor to the Argentina ones. So now, we have two out of the three Nominating Committee reps that are affiliated with or have strong affiliations with ccTLDs, and the rep that was just chosen I think is the head of the ccTLD or head of some part of the ccTLD.

So, the principle is that I think it's one of the things that the Nominating Committee should look at when evaluating candidates is what is their background and try to get a diversity of background as opposed to – well, that's the point that we all discussed.

Wolfgang Kleinwächter: Again, the best answer to this is bring good, high-qualified candidates. So, this would avoid such let's say decisions, which is irritating.

David Maher: Thank you. Anyone else? Ray, go ahead.

Ray Fassett: Thanks. Ray Fassett. I just have a procedural question and maybe some other past member of the Nom-Com might help too. Prior folks that have thrown their hat in the ring for a position, are they ever doubled back to the following year to find out if they still have an interest if they weren't selected in that round? Do we go back to them and say we have another position open, are you still interested?

Wolfgang Kleinwächter: You know, the general practice is that people who have served for one period can reapply. But, it's not an automatic continuation, so they have to reapply and they go through the same procedure like all other candidates.

I had a discussion recently with Steve Crocker and he said in the Board members nominated by the supporting organizations are very often re-nominated. So they have a six-year term. While the rule is – not the rule – the practice in the Nomination Committee is that very seldom a person who was nominated by the Nominating Committee is reappointed. So, I cannot make any forecast because we have just one person to select for the GNSO Council and I cannot make any prediction.

Ray Fassett: Maybe I didn't articulate my question well. Those that do throw their hat in the ring go through a very rigorous process, a questionnaire process. Then through this process, they may not be selected or nominated.

My question is, is there a procedure to go back to them the next time?

Wolfgang Kleinwächter: Okay, I misunderstood it. Certainly, candidates can click a box and say, "If I'm not selected in 2009, take my application for 2010." So that means we will take – but I have no idea what the names are because this is confidential and Trisha Drakes will delete all the names, and then come back with the names, which has been clicked the box and put it in

the 2010 box, because we have to delete all the documents and the references, and the personal information from the computer. Just the persons who have indicated that they would reapply in case they are not selected.

So then, this will be transferred and we will email to them, and we'll ask whether they agree that they are now part of the pool of the 2010.

**Male:**

I would like to add one thing. Speaking as a former member of a Nominating Committee and also Chair of the Nominating Committee Review Working Group, one of the recommendations that – I'm getting ahead a little bit of the agenda here.

One of the recommendations that we will make in the report is to target the outreach according to requirements. And I think – and I'd really like to stress the point that was being made earlier. The Nominating Committee will need your help in order to understand where to recruit. When the selection phase happens, it is mostly too late to change the candidate pool. So, think about and tell the Nominating Committee where it can find good candidates, where it can look for good candidates, what groups of people it should ask to apply, and how it can reach them. That is really a critical thing.

Also, tell them on a high level what requirements you think the various groups that the committee feeds into have and what those groups need. Those are critical pieces of input, and as I said, we are going to make that point in the review report as well.

**Andre:**

If I can add one point is we have a job description, which was more or less drafted by you. But, the composition of the Council changes from year to year and what we had when I was a voting member in the committee is we made a skill analysis of the Board, and we can do that also for the Council, that was okay, these are the needed skills in the Council, and these are the missing skills. If you then said that this is what you have to have in the Council, the persons, and then if you have ten technicians and no person who understands, then there's imbalance. Then, you have to look for a person who has some business experience to rebalance the composition as a whole, because the composition changes year by year.

And then so far, this would be very helpful input from your side say we expect for the 2010 selection a person who has not only enough

knowledge about gTLDs and all this, but who has a special skill in technology or security, or business or diplomacy, or what else. This would be very helpful and guide the Nomination Committee in its final phase.

David Maher: Good job.

Chuck Gomes: Thanks David. With regard to the candidate in question here Andre, I don't think it's a matter of him being well qualified. In fact, in my early interactions with him, I think he's a very qualified individual and I find him to be a very bright and delightful individual. I've been very impressed.

But, I think the issue that needs to be watched is putting people in a situation where they may have a conflict of interest. So, I'll just leave it at that. And in particular, at a time when the GNSO and the ccNSO have disagreed on some key issues, that was part of the concern. And again, personally, this is certainly not about Andre because at least I've had the opportunity to get to know him a little bit and I've been very impressed.

So, it's more avoiding situations where somebody may be put into a conflict of interest I think is the case.

Now, my second point is very different than that and it's more of a GNSO point rather than a Registry Stakeholder Group point. But I'm sure, Wolfgang, you're fully aware that in this next selection process, the GNSO needs the Nominating Committee to assign for this time around all three candidates to seats either in one of the houses or as the non-voting rep, and I just wanted to bring that up again. That's going to be very helpful in the future. You will only have to assign the seats I think according to the ones that are filling. But, that's going to be very helpful.

I'm fully aware of the fact that in 2009, that request for assigning the NCA's to the GNSO was not given early enough in the process, so there's no criticism there. But, I'm just bringing up something that's going to be very important for us. I personally think it's very helpful that the Nom-Com fulfills that role rather than getting into the issues that we did in the Council this time around.

David Maher: Thank you. Anyone else? Well, if not, Wolfgang, we appreciate your joining us and giving us that report.

Wolfgang Kleinwächter: Thank you very much, and probably, we can continue the debate in the Nairobi meeting when I officially can speak on behalf of the Nomination Committee. Thank you.

David Maher: Very good. We'll hope to see you. Thanks.

Moving along on our agenda.

Ray Fassett: I had a question.

David Maher: That's right. Ray, I'm sorry. Go head.

Ray Fassett: We're back to the agenda and onto my question. So, here's the question and discussion I wanted to throw out as part of what we heard yesterday. The things we heard yesterday came to a surprise to a lot of people yesterday.

There are some applicants here that are caught in the crossfire, and I might call these potential applicants non-standard applicants. They might be IDN applicants. They might be city applicants. Some are here in the room. It might be community applicants. And I think these applicants are caught in the crossfire.

I'm wondering, and the question I have and discussion I wanted to throw out is should we, as a constituency, take a position or offer a suggestion of a way forward to allow these type of applicants that are caught in the crossfire a method to apply that likely won't interfere with the root server, pick a number, 100, issue, likely won't interfere with the economic issues of open TLDs, likely won't interfere with the policy issues that are going back to the GNSO. So, I'm throwing that out for discussion.

David Maher: **Nacho** and then **Ken**.

**Nacho:** As (55:02 Unintelligible) we fully support that.

**Ken:** I'm somewhat confused because my lack of technical knowledge. Before I can support something that like, I would need to understand exactly, number one, what that means, what a way forward is, and number two, what the impact is.

If I had the expertise of some of the people in this room or **Lyman** or Patrick or something like that, but I'm stupid enough to think that a new

TLD added to the root is a new TLD, whether it's a small TLD that has 5,000 names or whether it's a large TLD that has potentially 100,000 names. When you're adding something to the root, you're adding it to the root. So, at some point in time, I'm hoping that the Registry Constituency requests clarity on the report that was presented to the original report that was presented by that committee. And, I think it would be a good idea for us to consider that possibility down the road.

It's hard to come down anywhere, because I don't know what the impact is by coming down. It's kind of like you let – "is letting a little guy in any different than letting a big guy in?" I don't know. With DNS SEC and all of the new things that are coming in, and that's why I ask that.

David Maher: We have three. **Kerry**, go ahead, and then Tom, and then Jeff.

Male: In response to your quandary here is that the numbers of times the root zone is queried is the issue, and a small domain is going to generate far less traffic in the root than will a broad (57:13 unintelligible) domain. So, the size of the TLD determines how many times the root is going to be answering information about it.

Ray Fassett: One follow up then. If that's the case, then how do you determine in advance how big is big? I mean, let's be frank. If we take a look at the proposal that most of the TLDs were let into the system after the first time compared to where we are today, that's one thing. The other thing is what happens if somebody proposes small and it gets large? Do you say you only let someone in if they promise you they don't get any larger than 5,000 TLDs and when it reaches 5,000, you'd cut them off and say I'm sorry, but we can't let any more into the root? I don't know. I'm not that techie, but you understand. How can you get behind anything without knowing? It's almost discriminatory. That's the reason I say that.

David Maher: Tom...

**Tom:** So, one of the important messages in the report and what Thomas Narten said yesterday was where is the comfort area in terms of where we believe we can responsibly add TLDs at a certain pace. And, what that means eventually is that if there needs to be rate limiting, then you get to the policy question of how you allocate the suddenly limited slots. That is the first place, a policy question.

If you look at the scaling report, important, a very critical piece of where rates of changes are really important is the provisioning of information into the root zone. We're talking about the number of changes that need to make it through various processes before they actually get deployed into the root zone. So, that is on the technical level and the operation level, a really important concern here, and I think if you are thinking about how different types of applicants need to be considered, that is largely on the level of a policy question, in fact.

And other than that, I would actually recommend that perhaps if there are detail-level questions into the study, it might be a good idea to try to corral Suzanne Woolf into the room at some point. I think she might want to show up later anyway and she is a good person to ask on the detail level.

David Maher: Thanks. I think Jeff is next, then...

Jeff Newman: So Ray, let me ask, since you brought it up. Is your question on general categorization of TLDs, and then I have an answer just depending on what – just help me in my mind.

Ray Fassett: So, let me back up one minute to what was just said. I don't think this is a policy question at all. I think it's already been through the policy process. So many recommendations have already been made. This is implementation question. How do we implement a process based on the policies that have already been through to allow a Dot Berlin to apply, to allow other types of those domains to apply?

Jeff Newman: So, my answer here is not going to make Dot Berlin happy or some of the ones advocating this. I just think the overarching issues that remain apply equally to a city, can apply equally to a brand depending on how it uses it, can apply equally to any of the categories that we're considering. And, my view is that as long as those overarching issues remain and are unsolved, they're unsolved for all.

The registry/registrar issue can be an issue with all of them. The economic analysis can be an issue with all of them. The trademark issues can be an issue with all of them. And I understand I've seen the arguments from Dot Berlin, and I know they're not happy right now with my statement. But, they're basically saying, "Look, we'll adopt all the IP protections that have been proposed. We might even do more strict ones," which is great. But why can't I, as a gTLD, a generic in the most sense say the same thing? I can say the exact same thing. I will adopt

the most strict things. I will authenticate. I will make sure every user meets these categories. I just don't think there's a way right now to categorize names in such a way that would apply equally across the board that's an easy way to put people into categories.

Look, we tried categories earlier with sponsored TLDs, and some of the ones that have been sponsored TLDs frankly have some of the same issues that as gTLDs we all have. So, I guess I'm a little bit different here that yes, there in theory could be a category, but at this point, I just don't see how intellectual property is not an issue with a city as it is for a gTLD.

**Ray Fassett:** Okay, so one last follow up to that and we won't turn this into an elongated discussion. We're the Registry Constituency. We know there are applicants out there. They've put a lot of time and effort. I've been there. I know what that's like. To me, I understand the issues that have been put forth yesterday. We know there's a definite delay. If we, as the Registry Constituency, aren't going to propose a way forward for applicant's that really we can all common sensically look at and say really don't fit those issues that are causing the delay, then I don't think anybody else is going to.

**Jeff Newman:** But that's the problem. I don't think there is a way that we can look and say that common sense, that's not an issue.

**Ray Fassett:** But, I'm throwing it out for discussion.

**David Maher:** Edmon.

**Edmon Chung:** I was wondering if I can propose an exception, which is to circle back to what Kerry said earlier about IDN gTLDs. I wanted to actually ask Kerry if it's possible just to elaborate a little bit more on that and perhaps how we might or might not bring this up again.

**Kerry Carp:** From the perspective of the root zone, an IDN domain, it's not what the user sees. It's these XN—cryptic stuff strings. And, the ones that are going to be in the root certainly within the next half a year are going to be Xn—that map out into the CCU realm. And to have XN—things that map out into the GU realm is a very obvious way to proceed from the current experimental reference into a our realm of business concern. And a categorization, just binary to start with, we currently have asked the only gTLDs because that's the only thing anybody's got.

The next thing that might happen is IDN labeled gTLDs, before we even enter into the discussion about varieties of TLDs under either of these heading. I know I'm going to end up sounding like a broken record before this is over, so I might as well get started early.

Here's yet another wonderful opportunity that we have to ignore something important.

David Maher: Thanks. Steve...

Steve Crocker: At the risk – well, I would like to help share some information openly at the risk of saying things that I perhaps shouldn't say. So, here it goes.

With regard to Fast Track IDN ccTLDs, we expect to get a very small number of initial applications for that. Included among those are a few countries which we view as exceedingly important because there have been veiled threats all along that if they didn't get their IDN ccTLDs very soon, they would create alternate roots.

So, for the sake of trying to maintain a unitary root and to foresaw such things, we are looking at the introduction of a very small number as a very useful experiment to see how they work. These countries have agreed that they will be subject to changes should changes be necessary because of stability issues or because of new protocol developments in the IDN protocols.

My understanding is that they're also amenable to signing agreements and to paying fees, which is a subject of controversy about IDN ccTLDs in general, but not with these countries that are involved.

So, on balance, I think as a Board member that this is a very good thing to proceed with. I do not think that it's going to materially invade the G space, and I would certainly hope that well after my term is over that others on the Board will make sure that there is no imbalance or no land rush that precludes the G space from getting its fair share.

So, again, I'm doing my best to be open with you and transparent about the whole thing. I hope I haven't said things that I shouldn't have said, but thanks for listening.

David Maher: Thank you. **Jordi...**

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**Jordi:** Yes, thank you David. There was a question some minutes ago regarding the size of the possible new gTLDs that could be around. Well, we look at – and we may be an example, that doesn't matter. But it's crystal clear that there are certain cultural gTLDs that are, by demographical reasons, have a limit, and some of them, many of them (1:08:27 unintelligible) going to apply want to apply just by demographic reasons are much smaller than ourselves. We're not yet arriving to 40,000. So, that could be a measure for instance.

I don't support the legal terms. I mean, we are moving in a legal framework in which I don't know, who are one of the domains with the least number of legal issues, but we can tell you that we have very, very few.

**David Maher:** Thanks. Ray, go ahead.

**Ray Fassett:** And, somebody can correct me if I'm wrong. I heard the issue from the root zone folks. It's not the size of the zone. It was the number of TLDs added to the zone in a certain period of time. That was the issue. And what we learned in the sponsored round, which I don't want to repeat the sponsored round, but what we learned is when you put in a round that has a lot of restrictions to it and qualifications, etc., you don't get a lot of applicants. That's what we've learned.

So, is when the implementation process says basically anything goes, well, that is what creates the avalanche of new applicants, and personally, I'm in favor of that approach but it's not the way it's going to go? So, my thinking is is that I don't see a reason to not find a way to allow a process that really is not going to bring is thousands of applicants; it's going to bring in just some applicants to the table. But, Jeff is shaking his head. I'm ore than happy to hear what you're thinking.

**Jeff Newman:** So, I think part of it is the issue is also the queries to the zone as well as the number of TLDs. Because I can tell you for example, the Dot Gov TLD, although smaller in number to many other TLDs out there has a lot more queries than those other TLDs, exponentially more queries and puts, at least at the TLD server level. So, I just don't think that you can make that judgment in advance when someone applies as to what the limit would be unless you actually put limits on it after it launches, which is almost an impossibility as well. I just don't see it.

Ray Fassett: So, you're saying that the RSSAC issues are more than just a number of TLDs added to the root. It's also the size or the queries to that zone. I'm not sure myself.

Jeff Newman: Well, I'm not saying that's the RSSAC issue. I'm saying that's in my mind. So, I'm not an RSSAC member and I skimmed the report, but I don't know what was in the mind of the people that drafted it.

David Maher: Tom, go ahead.

Tom: So, just very briefly, key piece is provisioning the root zone itself. It's about the root zone system. It is much less about the size of the TLDs. So, I think we are off in a slightly dangerous direction here if we think for the sake of argument that it would be entirely fine to add a couple thousand very small TLDs that then cause to the tune of 15 changes to the root zone on a day. That is very likely to get a lot of people out of their comfort zone just like the same rate of changes cause by large TLDs would get them out of their comfort zone.

So, I'd be very careful here about what the variables are that actually control the concerns.

David Maher: I think at this point, we've very clearly exceeded our technical competence, and this is an area that obviously deserves a lot of study and discussion. I think I agree with Ray that it's a very interesting concept and there may be some possibilities.

So, what I'd like to propose, we're expecting Kurt Pritz. I think it would be a good idea to have a short break.

Male: Sorry to belabor this. I just want to get a sense of a temperature of the question I asked, especially about IDN gTLDs, and what Kerry suggested as a natural progression for the experiment if you will.

We talked about having IDN gTLDs, but I just want to get a temperature of the room whether it's good time to reinvigorate that discussion.

Male: I just have a question. When I'm thinking about that issue, I mean Edmon, what issues that are the overarching issues now for the entire community to decide are not issues with an IDN gTLD? In other words, doesn't the IDN gTLD still have trademark issues? Doesn't it still – unless there are certain rules put in place where you said an IDN gTLD has to

just mirror the regular gTLD. Unless there are specific rules put in place, don't some of those issues still exist? And if so, then how can we convince the rest of the community that that should be allowed to happen?

David Maher: Okay. Let's cut this off and have a break. We have exceeded, long exceeded the technical expertise in the room. Thanks. Take five minutes and we'll get back.

If everybody could take their seats, we'll get started again. Kerry Carp take your seat. Chuck Gomes, take your seat. Chuck. Chuck Gomes, we're calling you. Take you seat. Everybody else, let's sit down. Kurt is here. Thank you. You've got to be very mean in this job.

Well Kurt, welcome. We appreciate you and Dan joining us. Do you want to start with a statement or issue, or a set of questions? Or, do you want us to start?

Kurt Pritz: I'm fine with you starting. I know there's a host of issues to be discussed, a lot of them associated with the new gTLD program, the contract associated with that, the trademark protection work that's being done. So, that's a set of issues.

There's ancillary issues to that right, the timing of the Fast Track process that is currently being launched. So, I'm just happy to take questions if you want to start that way.

David Maher: Okay. The floor is open.

Male: Well, we have the ones that are up there that we talked about. I could read them.

David Maher: Please read them.

Male: So, I was just taking down questions as we were discussing them this morning, so these weren't all mine by no stretch of the imagination.

So, if we start with the vertical integration on that issue. The question that came up from the group, the first one is, so we had this session yesterday. We heard from both sides. What's the timing and what's the process to bring this issue to a conclusion? Is there going to be another draft document issued by staff that gets commented on, obviously, after

we submit our comments in this round? So, what's the comments to bring that to closure?

Kurt Pritz:

I don't know. So, the Webinar, as we look to get to the end game, I think one of the characteristics of this discussion to the extent that it's a bottom up discussion is that there's a set of interested parties that's very broad. There's a subset of those that understand the issues well, and then there's another subset that have opinions but don't understand the issues.

So, this latest set of consultations that you guys participated in with a lot of effort and the registrars did too, a lot of last-minute effort, was meant to shine a light on the arguments to inform the rest of the people that are involving themselves in this discussion that these are a complex set of issues. So, I think one of the benefits that came out of the session yesterday was that people are understanding it's a complex set of issues and it promoted a much greater understanding across the community about the issue itself.

What certainly, I don't think did come out of the session, or I'd like to hear from you, is that we're not getting to a compromise or working toward a solution that's generated through that sort of discussion. So, I think it worked really well as an informative session that really brought the complexity of the issue to light to the personal expense of Brian and Richard, and those that helped them.

So, I don't exactly see the path home. Certainly, one is to allow some time for compromise, and then if there's not compromise, the Board will get involved and make a call. So, that's one path. But, how we get to that eventual place where the Board is making a call is uncertain to me and I'd be pleased to discuss with you guys ideas you have for getting home. After this meeting and then dwelling on it, I think certain paths will become available, but ideas you have for getting there would be helpful, because I don't see it exactly.

Male: (1:24:33 Unintelligible).

Male: Are you going down that list?

Male: Yes. I was just seeing if anyone wanted to – I mean, Kurt asked the question if anyone has ideas on the path. I don't know if anyone wanted to respond to that.

David Maher: I don't see any volunteers.

Male: Okay. I think that is, Kurt, probably something that we will need to digest, what happened yesterday and file our comments, and then figure that out. I think it's a good question.

The second question, which is probably going to have a similar answer: The group discussed well, let's say we bring that process to a conclusion for the new gTLDs to the extent that that has any affect on the existing gTLDs and competition. What thought will be given to the existing gTLDs?

As an existing gTLD, I can tell you that if it proceeds down certain paths that we can imagine that we would immediate want those to apply towards existing gTLDs. So, how would we go about doing that and if you've given any thought to that, or just to make sure that's in consideration going forward.

Kurt Pritz: I think that's a very important issue and there's two layers of problems here. Cost, then there's old gTLDs with price caps and whether those price caps need to be in place. So, there's a couple layers to the onion and how those – maybe Dan can help me – how those can be addressed. They can be addressed either through a contract change or a request for a contract change to match that so that the gTLDs are on a level playing field, or through a policy development. But, I think that's a longer process.

You know, it's funny. You used the word up there, "new policies," so that connotes I think a longer process. But perhaps the path of contract renegotiation is quicker.

Male: Kurt, this is Jordi from Dot Cat. I'll ask the same question, but related to the existing gTLDs, which are small, some of them – well, we are here. So not only the culturally linguistic our self, but maybe others that may be interested to be registrars or to have certain access to that to develop the market, because now we may be capped on that, maybe a bottleneck for our growth.

Dan: So, I could just talk a little more. I think it's a very important consideration that people shouldn't forget about not just in this room but outside too, whatever kind of rules and ideas to come up with to stick in the new

gTLDs. Everyone's going to have to think about what does that mean for the existing ones.

It doesn't directly affect existing one. The whole discussion isn't about what rules to put on you guys right now but it's definitely something to keep in mind. And then I think once we have rules in place, either today or next year, whenever these rules come out, ICANN will always entertain requests from registries to amend agreements and that would be a standard amendment, and we could follow the normal process.

A separate question that Kurt just mentioned, which I think we all would have to look at more carefully too is what about a policy process? What happens if this goes into the GNSO? What could come out of that? What affect could that have on existing operators? So, there's a lot of complicated issues there, and I'm not giving any answers, just agreeing with you that it needs consideration.

Male:

Right. I would just say that if certain of the – well, all of the TLDs that came out after com and net and org were given restrictions simply for legacy reasons as opposed to necessarily considering the economics or whatever else is being considered at this point in time. And, I could tell you that – and I don't support this – but, if the outcome were some opening or integration, which again I do not support – don't take this as support. But, if that were the way forward, then it would be fundamentally unfair and anti-competitive to make us go through a policy process or any process that requires us to justify why we would need to change since there was no justification for putting the restrictions on us in the first place, or there may not have been.

So, this does require extensive discussion, but I do not want ICANN to take away from this that it would have to be a formal change of contract process that goes through an R step or a policy development process, because that would be fundamentally unfair and anti-competitive, I would certainly argue.

David Maher:

Any other comments on that? If not, can you read the next?

Male:

So, the next set of questions were with the agreement, and I think this is a theme without pointing to many specific sections. But, ICANN has still retained the unilateral ability to amend the agreement, and although there have been a couple of modifications to Article 7, really, it's still pretty much the same. Basically, what it says is anything in Article 2 can be

changed through this process, and ultimately, even if the registries oppose it, the Board could decide for whatever reason it's important enough that it overrides that support. And Article 2, if you look at it, pretty much assumes everything else in the agreement with very few exceptions. And even in places where there are exceptions and new things added, like in the technical requirements, there's language that your legal has added in that basically says that you may amend at your reasonable discretion from time to time, and that's sprinkled throughout. So, it's all kind of the same theme.

So, I want to turn it over to Steve.

Steve Crocker:

Yes. I think expanding on that, it is highly unusual in contracts between private parties for one party to have the ability to change the terms and conditions. It's suspect as to whether you even have a meeting of the minds, and I would ask if anybody would actually be willing to sign a contract where the other party could just change the terms and conditions. So, think about that, I think, for a moment as to whether you would do that personally. And when you put us in a position of having that kind of contract provision, everything else in the contract really becomes not exactly a minor issue, but it doesn't matter what it is that we agree to and the rest if you can change it.

So certainly, the registries care very deeply about this issue. I think every other member of the ICANN community cares about this as well, because I think the registrars will recognize if you can change the registry agreements unilaterally that they are next in line. I think that the rest of the community has got to be concerned about the certainty. And if the balance that has been struck to this point has been predicated upon contract certainty with still the ability to have flexibility by ICANN through the consensus policy, then this really puts that whole theory in jeopardy.

Dan:

Thanks Steve for that, and we've definitely heard you loud and clear on this for the last couple of times you've raised this concern. We've tried. I mean, I'll admit we've tried to address the concerns, but the central idea is still there that ICANN does retain the right to modify the agreement.

I'll just put a twist on it. I think that going through some of your points; I think ICANN can unilaterally change the registrar accreditation agreement. We just went through it with the 2009 RA. ICANN when through a policy process, came up with a new form of agreement for registrars. It had super majority support of the GNSO, the Board adopted

it, and that now is the new RA for all registrars if they sign up and when they come up for renewal. They all have to enter that new formal agreement.

Steve Crocker: And I have looked at that and the amended provisions that are corollary to what are in the registry agreement are entirely absent. It requires mutual consent to amend that. Now, you can amend it every here and there when the last amendment was how many years ago was that...It was a very long time ago.

Male: (1:33:29 unintelligible) from 2001. But I mean, the point is there's 900 registrars and ICANN can, through the policy process and through due process and Board consideration, ICANN can make a global change that will eventually affect all the registrars. They all have to come to that new form. We don't have to go individually and negotiate bilaterally with each registrar.

So, we do have a similar – it's different, but it's a similar provision.

Steve Crocker: Okay, but – sorry to cut you off. Of course, you want the flexibility to be able to go and change agreements. From a contract standpoint, it makes it easy, but I think each one of us would like to have flexibility when we sign a contract that says we can change the terms down the road if we feel like it. How does that give us the kind of certainty that we need? And for new gTLDs applicants who have to go to their investors and say we're devoting all this time, money, etc., we're going to sign a contract with ICANN, let's celebrate, but it turns out that they could change the terms at their whim down the road?

Jeff outlines a little bit Section 2, which is changeable sweeps in virtually everything...

Jeff Newman: It's basically all the registry obligations.

Steve Crocker: Section 6, fees, I mean, that's a pretty big one. Section 8 is all the general terms and conditions. If you didn't like the interpretation of things, if you didn't like the way that anything was constructed, you could change it. So, it's tough to swallow.

Dan: So again, I understand completely. I hear all of this. I think – I mean, the best argument I've heard on this – you know, I personally, I think we all

enter agreements all the time where the other party can unilaterally change it, and I think...

Male: We do?

Dan: If you look at your registration agreement for your domain name, it'll say the registrar can change this unilaterally. If you look at your credit card agreement, it'll say that the issuer can change it unilaterally.

(1:35:21 Crosstalk)

Male: Here's a very big difference.

Dan: Let me just finish. The registry registrar agreement, registries can change unilaterally on all the registrars just have to take it. So, it's not an uncommon thing. But, the best argument I've heard is you've got to be extra careful with ICANN. If my credit card issuer changes my contract or my ISP, I can go pick a different ISP or a different credit card. ICANN's a little different there. A TLD operator can't go find a new ICANN to give them a TLD agreement.

So, I totally understand the arguments there, and I think it's just we're going to have to make a decision on this. Staff has put this in. We've listened and we've made changes. We've tried to limit it as much as possible. We heard you about we don't make retroactive changes to the agreement. We don't want to change the dispute resolution provisions. So what we're left with is kind of the kind of core idea. So, we want to continue to hear the discussion on this.

I think from the staff point of view, the registry registrar landscape, all the stuff you guys talked about in the debate yesterday; we've heard you talk about gaming. There's gaming going on. We have to be able to address it. So, we're just nervous about having such a fluid changing landscape and then writing a contract in stone that we can't go back and change, that'll kind of be set for all time.

Male: But you have the consensus policy mechanism in that the rebuttal to the credit card analogy is a very easy one, because we can just, if you don't like the terms and the conditions, they raised your interest rate, whatever it is, get a different one. You haven't invested millions of dollars in building that. So, that's a very keen difference.

And, I also think it's clear why ICANN would want this. Every one of us would want to have that kind of power and flexibility, but I think if you could get consensus on one point that virtually everyone in the ICANN community would rally around, it is ICANN shouldn't be able to unilaterally change the promises that it makes.

Kurt Pritz: Let's be careful about power and flexibility, because it's power and flexibility to an end, right. It's power and flexibility about stability and security of the DNS and ensuring an even playing field for all registries in an environment where there's a lot of them. So, one of the difficulties and criticism for ICANN is that we cannot react to changing marketplace.

So, in the registrar marketplace where things have evolved, we've been taken to task by not being able to address certain behaviors that weren't anticipated. You know, we can argue about whether the safeguards are effective or not, but by putting in safeguards such as somewhat limiting the terms that can be amended, but more that the registries can essentially veto a change...

Male: (1:38:14 Unintelligible)

Male: Well, the Board can do what the Board....

Male: But, the Board is not comprised of registries or anybody. The Board is the Board. The Board could just say, "Okay, great. The registries voted against it. We vote for it."

Male: And we noted one of the primary challenges with that, if you change economic issues, pricing, then we, as a constituency or a Stakeholder Group are put in the position of saying we all have to collectively agree that you cannot change this pricing or fee issue, which is a big, fat antitrust concern. So, the override mechanism supposes that it's even acceptable out of the gates to allow an amendment in the first place. It's a fairly tortured process about how you would override what specific sections can and can't be overridden as opposed to the fundamental premise of why should you be able to change this unilaterally in the first place, especially given that you have the consensus policy mechanism, yet you already have, if you need to do something quickly about security and stability, you've got temporary policies that you can put in place. But, it's also critical that before you not exactly codify but make those temporary things more permanent that it has to go through the consensus policy mechanism.

I'm very concerned and I think that's the next issue on the agenda, Number 2. The consensus policy is even capable of being amended. That's found right now in Specification 1, which is part of Contract, Section 2. So, if you can change the consensus policy mechanism, if you can change the definitions of security and stability, which we also asked you to button down in the last set of comments, that basically makes it fair game for you to change all kinds of things whether the community believes that's the right thing or not.

And just to add to that thought, the fee one is probably the most egregious. Not only do you have the ability to change it because of pricing increases in the market, but you already built that in there, which I think may at some point be acceptable. I'm not sure I personally take issue with that, but then you have the ability to raise the price again if (1:40:47 audio glitch) that's not acceptable. It's ludicrous. It's not something anyone could agree to as far as certainty, and I'm really curious to hear why.

The other reasons you gave, to stop gaming and all this other stuff, we can certainly – obviously, it's arguable completely, but I can see no argument for you to raise fees. And in fact, what if the price of the market, what if the prices go down? What if there's deflation? I didn't see anything in the agreement that your fees would go down if there's deflation. I only saw that your prices would go up if there was inflation.

Male:

I think one more point to make is I don't think there has been as great a hue and cry in the community about this issue to this point, because it's a small contract section in the registry agreement, which people presume that it just affects registries. If you print out the Draft Applicant Guidebook, you don't even get the base registry agreement. You've got whatever it is, 300 pages worth of the rest of the application. You have to be really looking specifically to find that registry agreement.

So, I think again, there's good reason why you would want to be able to change the contract at your will, but there's very good reason why the rest of the community should find that to be very dangerous.

Female:

I just want to go back to basic, because really, I still don't understand what the need to amend the contract at will comes down to. I understand the description of avoiding gaming, but if you look at the history of the

contracts over the ten-year period, there hasn't been massive change in them. You have not needed to change them massively.

So, is there something different that's happening now, because what you're doing is essentially introducing an element of uncertainty into every business that you're dealing with here. Aside from the uncertainty that they signed up for and agreed to and took on, which was to do the things that you need to do to preserve stability and security, even in an emergency situation, they have to go along with those policies. That was the deal. Now, there is this new and anything else kind of deal, and it's a fundamental alternation of the sort of bargain that brought registries to the table, and one in particular to the table ten years ago.

Dan: I'd like to hear what Kurt has to say about it too, but I think for me, it comes out of the experience with the registrar accreditation agreement where we went from first 1 to 30, and then we got to having 900 registrars. And from time to time, we had conversations. The agreement says what their loopholes or whatever that we uncover in the registrar accreditation agreement and the process for changing the registrar accreditation agreement wasn't simple at all. We had 900 of them. We couldn't go bilaterally and talk to each one and change it, and that would result in its own mess. We'd have different contracts.

So, we needed to be able to change it globally. And luckily, in the RA, there is that provision where we can go through a consensus policy process and change the entire contract with registrars, which is even broader than what we're talking about here with this amendment procedure for registries.

Female: It's not (1:44:33 unintelligible). It's more arbitrary in fact.

Dan: With the RAA, if the GNSO recommends the adoption and the Board adopts it, we can adopt an entirely new form of RAA like we just did for the 2009 amendments. Just, the entire thing can be rewritten as long as it has consensus support and Board approval.

Female: As long as it goes through the PDP, which is the safeguard here. Now, I am not proposing – and I haven't talked to anybody and certainly don't have, and probably would not propose to go down that road. But, we're not talking about 900 registries. I mean, with all due respect, maybe some day, but didn't the root scaling study just come out and say we could add 100 new TLDs a year?

We're talking about something where the investment is much bigger going in. Registrars don't pay you \$185,000 to apply to be a registrar. The kinds of issues that you have with a very low entry cost in a registrar situation just doesn't exist here. So, I understand that, but I just think the fundament premise that because you had trouble with 900 registrars, you're anticipating trouble with registries who are really make different kinds of economic commitments to this business doesn't translate to me.

Dan: So, if I can just respond Ken, I see that Ken wants to get in the queue too, and I think I'm taking Kurt's microphone.

But, I think that's what – staff and I think, and probably Kurt shares, that's what we are thinking about is we are moving towards instead of where we just have this nice collegial room of cooperative and well-intentioned registries, we're moving to a place where we will have dozens, hundreds, and maybe with the same contract, thousands theoretically, who knows, five, ten years from now of registries, and it might not work the same way. And, I personally don't feel infallible that we can come up with the perfect contract today and set it in stone and it will work five or ten years from now in the totally different environment we might have.

So, we're recommending or that's in the proposal is this revision and I think I totally understand what you guys are saying. I could see myself easily sitting in your shoes making the same arguments. I understand them. But, the case I think has to be made broader, and I agree that there are big questions and they should get wider attention, so I encourage, I don't know, a broader discussion or bringing it kind of up a level, or out louder to make your guy's case that ICANN should give up this ability. ICANN should let it goes, and ICANN should give registry operators certainty to kind of make ICANN comfortable with that. But, I don't know that we're there yet as staff where we can say, "ICANN, don't worry about it. This contract's perfect. You'll never have to change it. There will never be gaming."

Female: You'll never get that way. That's just not the nature of a contract. You'll never get there. The bottom line is it's not a question of ICANN giving up anything. It's a question of this group of people, even if there are hundreds of them, all of whom have invested a significant amount of capital in a business, all of them who have to run business operations, and what you're asking them to do is to give up certainty that every single business has. Just, that's the nature of it.

I mean, ask the publically traded companies around the table whether they could ever raise money in the market on a contract on this basis. I can't imagine.

Kurt Pritz: Here's the problem I have. I understand the issues you've had with the registrars. I understand you could have issues in the future that would affect security and stability. But at the same point in time, what you've done is you've used that, in my opinion, as an excuse to write a contract that gives you, in effect, just the right to change the rules that affect our business plan in the future. And in many cases, the only situation you're talking about is economic impacts, and you don't have to justify it. It's kind of like, "Well, we want more money and we don't need to justify it to you. We have the right to change our contracts."

Now, my feeling is that – and I'm speaking only for myself – if you have specific issues that you feel necessitate what you're talking about, you should make your case for those issues, and if necessary, what you look at is the possibility of creating – and I won't use the term "a picket fence" because God knows where that goes. But at the same point in time, you may have legitimate rights to be able to exercise that if it's a security and stability deal.

Male: I think that when that point was made in the last Draft Applicant Guidebook, ICANN has attempted to narrow it down to what issues they thought needed to be amended. The problem is that that was all of Section 2 and all of Section 6 and 7 and 8, and it's basically the entirety of the contract.

I think that what you seem to be expressing Dan is a contract administration issue. It's how do you administer 1,000 contracts and I have administered thousands of contracts with many customers. It's a pain in the neck to change it; that's true. But, it's throwing the baby out with the bath water to some degree if you just are looking for administrative ease and convenience to say we're going to open this whole contract scheme wide open because of that, especially when you already have the flexibility through the public process, the consensus policy. I would challenge you to find other – you've mentioned credit card company agreements – other written contracts between private parties. Not even government contracts allow that degree of flexibility. If you've even got regulatory schemes before changes are made, it's required to go through full due process and hearings, and everything else. And, right

now, ICANN staff could just change the contracts. They wouldn't even necessarily have to go through anything at all.

Dan: So first, that's absolutely wrong. I mean, go back and look at the process that we've put in there, and we've tried to layer on process after process, consultation. We'd first come talk to you about the proposed change. We'd post the change. It would go through a Board member process. It's not a staff unilaterally doing it. So go back and please take a look at the process we've laid out for these amendments. And if you have advice on additional due process, we've tried to listen to all of that and layer all of that in there.

Examples, again, I think go look at your registration agreement. Most of you have personal domains or your company has domains, and look at the registration agreements. It's going to say the registrar can change these terms, and if you don't like it, you can leave.

Male: And I think on that point, putting in a provision that we could terminate if we don't like the contract is – that's a really tough one to swallow, because that seems to put these in the same vein as a much more insignificant contract. If you don't like the terms that we give you, just you can leave.

Male: Well, what they could put in is we have the right to terminate but they promise not to get IANA to take us out of the root. In other words, we could terminate our agreement with ICANN but there's an obligation that ICANN not recommend to IANA or the Department of Commerce that that be a basis to remove us from the root.

Male: The comparison to a registration agreement is ridiculous. There is no comparison. There's no similarity.

Male: So how do you feel about – wait – I want to hear how we feel...

Male: No, I'd like to hear from Chuck.

David Maher: Ray wants to get in the queue.

Male: I didn't hear a response to mine. Is it an option? Would ICANN put it into the agreement?

Chuck Gomes: No.

Male: Then obviously, that's a bottleneck. Under any antitrust law in the world, that is a bottleneck.

Male: No, and that's how we started out. I said I agree with you. It's a different situation. It's not like your credit card agreement. It's not like a registration agreement, because Google.com might have a contract that says its registrar can change the terms at any time, and if Google doesn't like that, it can find a different registrar. It's different, because you guys can't find a different registrar, bottom line.

So, I agree with that point. All I'm saying is it's not unprecedented for commercial contracts to say one side can change unilaterally and if you don't like it, go away. I'm just not buying that.

Male: But, we're not talking about situations like that. A registry has a huge investment and we have to cover, for new TLDs, they have to put up some money, a bond to ensure that operations go for three years. There's a huge investment and that's why the analogy is ridiculous.

Male: So, I'm hearing you loud and clear. I fully understand it and I think the argument has to be look, we need certainty so we can make investments. The investments are going to benefit registrants. The investments are going to benefit – you guys need to make that case.

Male: We've made it. We've submitted two rounds of comments and in each of those, we've made it. Obviously, it hasn't reached anyone but you guys. I mean, it's very frustration. I'm sorry expressing my frustration. But obviously, it hasn't made it. Our arguments are only going to you and you're telling us we have to make the arguments. Who do we make the arguments to? I mean, I guess Steve Goldstein's here and there's some Board members hear. But it's kind of ridiculous that you're telling us to make the argument when we've submitted very comprehensive comments making these same arguments.

DAG 1 came out, we made the comments; DAG 2 came out, we made the comments. The comments haven't changed. The principle has not changed. Who can we make this argument to? Do we need to raise it to the government? Is that what you're telling us?

Dan: I think this is an issue registry registrar separation that has kind of come out of the draft Registry Agreement, but it's kind of gone above it. I think

it needs – you guys can't – I guess the bottom line is we've heard you. We understand. But, we've put in a provision that we think is like kind of – actually, I won't even say it's the last option, because I think there are things we could talk about like the fees.

I think someone made a good point about fees. We've put into this newest version an escalator for inflation, so maybe that takes away our need to be able to incorporate fees into this amendment process. So, I think we still have room to make changes on what exactly is covered in this and what's the process for amending it, but the essential idea I think – I don't think you're going to be able to talk to staff into taking this out. I think from staff's point of view and I don't want to speak for Kurt. John Jeffrey is not here, unfortunately, so it would be good to hear how he says this.

But, we don't want to be in a position five years from now where we have registries, number 121, 122, and 123 out there doing something bad that's hurting registrants, and we look at the contract and scratch our head and say, "Well, there's nothing in the contract that addresses this. Sorry Board. Sorry communities. The registries can get away with this," and they'll have our heads basically.

We want to have flexibility to be able to address future changing conditions, future gaming that might happen.

David Maher: Go ahead.

**Becky:** Thank you. Gentlemen, I think I understand your predicament in terms of contracts management, and I also agree with some of the points our colleagues have made. But what I find really perplexing is the issues that you're going to come up with, with respect to registries are going to be really dependent on what these registries are.

Certainly, a community TLD is going to be different than a Joe TLD. So, what's perplexing to me is applying the same rules from a contractual perspective all across the board. Can you explain that?

Dan: This gets into a question we get about categories. Kurt's gotten the question, I think, everywhere he goes. Why can't we have categories? Why can't we pull apart a certain kind of TLD and exempt them, give them a special contract, exempt them from certain provisions? Maybe Kurt, you want to talk to that?

Kurt Pritz: Well, it's a much longer discussion, but categories of TLDs are about making exemptions from the policy recommendations for certain classes of TLDs. So, for example, a brand TLD might not have to use ICANN accredited registrars or a community TLD might not have to comply with consensus policy is the way...

Becky: I'm sorry gentlemen. I disagree. I think that's part of the problem, but it's certainly not all of the problem. A lot of the issues that you're going to face with security and stability are really directly related to what that registry is serving.

Kurt Pritz: So, I just wanted to finish up with – well, add a couple of comments. I can see from your perspective how you might think ICANN could make unilateral changes, but from our perspective, ICANN is quite constrained. It's all about this model that we live in so that the ICANN staff or even the staff and Board I don't think could unilaterally create changes for the registry agreement that are violative of antitrust or even smacks of taking a top down position in the market. So, I think there's natural mechanism within ICANN that would constrain the use of the ability to amend it.

But like Dan said, we've layered in certain reviews and protections and should discuss more about mechanisms for safeguarding that inappropriate changes aren't made.

Becky: I mean, I can't speak for everybody around the table, but I think that the sort of "trust us, we can't do anything bad" argument is simply – it certainly doesn't resonate with me. These are not consumer contracts. ICANN is a \$60 million business. This group sitting around the table contributes some very significant portion of that. If you have 123 registries...

Male: Stop that Becky. You know, enough of you guys say that. Registrants contribute that money. A lot of that money, 93% of it is funneled through registrars and registries, but it is not registries money, it is not registrar's money. It is registrant's money.

Becky: Fine, I agree.

Male: So, please let's stick with that.

Becky: Okay. But, if it's 123, you're going to be \$150 million business or whatever it is. The point is if you could articulate concerns, what you are concerned about – not gaming, but particular kinds of abuses, that is something that we can all sit around the table and talk about, and find a way around. Nobody here is saying you have no legitimate basis to be concerned that you need flexibility. But, the problem is what you're saying is we don't know what's going to happen; therefore, we don't want to have any risk and therefore, we are going to put all of the risk on businesses that are operating at considerable expense, and investing in long-term facilities, hardware, everything.

Kurt Pritz: So, let's have a working session on this, because our concerns are legitimate. We sit there every year and are unable to respond to concerns people have with registrar behaviors because it is so difficult to amend the agreement. So, I think you particularly, as a group, want to safeguard the level playing field among registries when there is an equivalent number of registries out there.

So, I think it's perfectly fine for us to sit around the table and talk about ways of doing that.

Jeff Newman: So, let me just point out an example of why we don't think the review processes you've built in are sufficient, and all we need to look to is today.

This very meeting is exactly the reason why. What's happened is that you guys have proposed a change to something about the way we've been doing things. We've provided comments to you. You have told us that our comments are not sufficient, that you don't agree with our comments, and therefore, you're going to go ahead with the change. This is the same review process you've kind of built in. Because I guarantee you, every one of us in this room will probably vote against it.

So, we would vote against it. You've told us that you don't agree with us. You're going to go to your Board and your Board could easily approve it, and so your review process, what's happening today, is exactly the same reason why we don't like your review process. Because, if this very change were to go through the review process that you guys have set up in your agreement, this very change would go through. I hope that makes sense. I know it's a little convoluted. But, that's why we don't agree with it and that's why the review process you've built in is inefficient. We've all told you this is something we cannot live with and you've told us this is something you need, tough luck.

Male: And Kurt, I think your suggestion is very good to sit down and work together on this. The people in this room, you guys know aren't people that have been unreasonable in terms of working together and cooperating. We don't want the bad things to happen either. So, we can do it, but what's on the table right now just is unacceptable. So, let's work together and let's make it better. Let's define a process that is really reasonable in cases where it's really needed on specific issues. But just going in circles like Jeff just said isn't going to get us anywhere and it's not going to be good for the industry as a whole if registries are bound with an agreement that is not conducive for investment and innovation, the things that all of us have been touting with regard to new TLDs.

Dan: Can I just please answer?

David Maher: Sure, go ahead.

Dan: I just want to correct something I think Jeff has fundamentally misunderstood. Kurt and I aren't saying this is what we're going to do. This is what ICANN's doing. We're saying it's a draft still. It's up for comments. We want to make it better. Hopefully, maybe we can come to something different than this, I think along the lines Chuck and Becky are talking about, just different mechanisms.

But, we are concerned about the uncertainty. We do want to minimize risk. I'm ICANN's lawyer and I'm going to give them advice to make sure they don't get into a risky situation or have an unforeseen problem five years from now that they can't deal with. We're not going to hide from them that there are also risks with going through this model. The risk is it's going to create uncertainty for registries. It can dissuade investment. We encourage you guys to make that case. It's not going to be up to Dan and Kurt and Jon, or whoever, to make this decision. It's going to be a Board decision to approve the contract in the end. And, they'll hear every word you guys have to say about that.

David Maher: Ray has been in the queue for a long time.

Ray Fassett: Actually, that's a very good point Dan. If you're agreeing, if you can put that hat on and say that this approach is placing uncertainty at the infrastructure level, as we're saying it all does, understand when you do that, it flows to the registrant level. So, if we're in agreement that this

does add uncertainty at the infrastructure level, let's also understand it flows to the registrant level, the user level.

David Maher: Steve, did you have a comment?

Steve Crocker: Thank you David. Given where the conversation is now, I'd like to invite you to repeat to Kurt and Dan what you said, pretty much what was said here pretty much at the beginning of the meeting. That way, I won't have to report it to the Board and hope that the Board reports it to them. They can hear directly from you.

But, there was a statement made, something to the effect that this group was feeling that much more attention was paid to the IRT and a few other things in authoring the DAG than has been paid to the issues that are confronting your group and you've reported on. Maybe I didn't repeat it correctly and that's why I'd rather they hear it directly from you. So, whoever said that earlier, would you like to repeat it?

Male: Well, one thing that I think probably noted is that in the comments on Version 1 of the DAG, we asked for a meeting to discuss this issue.

Male: ...agreeing with you and saying we have had calls on it, but I think we need to have more. So, we talked about this. (2:06:27 unintelligible) teleconference about I think just this issue or maybe it was also on other issues. But anyway, I'm agreeing we need to talk more about it.

Male: I would add one thing. When you've said that you would not advise the rest of ICANN to sign up to a contract that does not provide you with sufficient certainty, as a commercial contracts lawyer from the other side, you would not advise your client to sign an agreement that allows the other party to the contract to change the terms.

I think where you get to is what is a reasonable position. I think that it is more reasonable to assert that parties to a contract are intending to have a meeting of the minds, that they're intending to agree to that which is set forth within the contract, and that only those promises that they're willing to abide by should find their way into the contract. So, who's position is reasonable on that matter as to whether your advice is give yourself flexibility and our advice is don't sign up to something that can allow the sand to shift under your feet.

I know in having negotiated an awful lot of contracts that the reasonable middle ground, it's very non-standard to let the other side change the terms.

Male: So, like one example you could do is if that you feel if there's gaming or some circumvention around the principle of the agreement, you could set up a mediation process. You could set up a process with that registry that's engaging in that activity. You go through a mediation. You have an independent third party make a determination as to whether that is something that's circumventing the policy in the agreement. And then, you could set up a process like that that doesn't involve a unilateral amendment.

There's plenty of things you could do when things violate the spirit of an agreement, which is really what you're talking about.

Dan: So, let me just – I won't totally belabor this. And Kurt is concerned about what is below the screen there, so I'm sure there's more to talk about.

But, just as an example, the spirit of the agreement. I think those exact words were in a letter ICANN wrote to Registry Pro a few years ago about behavior we saw going on in .pro that we were concerned with and we thought it was violating the spirit of the agreement. And, we did have some medication. We talked to them about it and luckily, there, we had a good-faith, cooperative party on the other side and we agreed bilaterally on amendments to the agreement and we changed the agreement to address what we were concerned about. That was all great.

That was because we had a good-faith party on the other side. We don't know – again, we're not talking so much about the dozen or so people in the room here. It's the hundreds of people who want to come into this room.

Male: That's why there's a dispute resolution clause. If you want to amend that to have some more meaningful process, you could talk about that. But that's exactly why you have it.

Dan: Yes, so if you have a contract, and like you're saying, you have a meeting of the minds and you put what's in the contract and you can't – it's a little hard to appeal to the spirit of the contracts to say we want to change it. Because even though black and white says this, the spirit of the contract is being violated.

So anyway, the bottom line, this is still in here because we're concerned about the uncertainty of the future. We want to hear from you guys if there are ways to fix what's here, if there's alternate ways to do this, alternate mechanisms; maybe a totally different replacement for this Article 7. We want to work with you guys on that.

Male: I think we need to have a bottom, bottom line. The bottom, bottom line is that you need to set up some sort of a definitive meeting with this specific topic with the parties who are most capable of interacting with you on something like this. And, we all need to go into that meeting with the best of intentions.

No offense. I don't mean it that way. But, if you're operating on the theory that over the last ten years, this has been a pain in the ass to us – every time we have a situation like this, so we want to have complete control over it and the only way we can get complete control is to change the contract any time we feel like, because that way, we don't have to screw around with this crap.

No, I'm being serious. I'm talking not as a lawyer but as somebody who's listened to what people have said here.

So, why don't we make arrangements to have you guys sit down with the people that are in the position to best discuss this with you, and let's all work towards a process that works for everybody so we don't view what you're doing as being arbitrary and capricious, and you don't view...

Male: So, we will do that, and it'll probably have to be a group broader than this room, because there's other interested parties.

Male: And, I have a small suggestion that might get us part of the way there, which is rather than amending the entirety of the terms and conditions of the contract, it sounds like what you need is some mechanism to ding people who have done bad actions. So, let's have some kind of provision that states that so long as you go through some process to determine that there are in fact this type or category of bad actions then you have a degree of flexibility to enforce that.

I think what you're talking about is enforcement against bad actors, and as Chuck said, I think everybody in this room wants to be good rule-following citizens. We're very responsible. We have an awful lot at stake,

so we want to be in compliance, but we don't want you to be able to change the rules.

So, maybe we can come up with some safety valve mechanism that gives you that kind of capability.

Male: So Jeff, is there more red below the – because I am supposed to go talk to the NCUC in....

Jeff Newman: I don't want to keep you away from that fun.

Male: And if you piss them off...

Jeff Newman: Yes, the last point – I mean, the first three kind of relate. The third point is that it all kind of relates to the unilateral change except for the forth one up there in red under Subsection 3, which is we noticed in going through the Fast Track, propose the four types of different agreements. We noticed that there's a lot more obligations in that agreement upon ICANN with respect to IANA and name server changes than you guys have put into the gTLD agreements, a considerable amount more detail.

So, the question is why there's more detail in those agreements. I probably believe it's unintentional, but as a gTLD, I would like those same commitments that you make to the ccTLDs with respect to your technical functions put into the gTLD agreement.

Male: So I would guess it's probably intention, but I would also guess that it's without affect. I think the IANA obligations to gTLD registries and our duties there are the same, so we can look at what the differences are there. Because certainly, we think ICANN has a greater obligation overall to gTLD registries than cc's, but as far as providing IANA function, it'd be the same.

Male: I'll just make one last comment, which is to cover Number 3 very quickly. I know there have been a lot of public statements about ICANN is planning to stay at home, stay in California. It's in the affirmation of commitments. You've added a representation warranty that you're a California corporation.

There's an assignment clause in the Registry Agreement that says you may assign to a reorganized or reincorporated body. We had asked that you put in the caveat that that be a body within the United States and you

chose not to make that insertion. And, I'd just like to make sure that you are going to do as you had said and stay in the U.S.

Dan: (2:14:15 unintelligible) it just always makes us especially nervous when we look carefully two or three times that every time we put the words "United States" in one of our contracts, like what does this mean, what does it say to people who aren't in the United States. So, just off the top of my head, I don't know where they came out or how well we looked at that, but we'll look at it again.

Male: Sure, and you understand what I'm getting at. Just by virtue of having a reorganization shouldn't give you the ability to change the entire venue of the company, the private not-for-profit corporation.

Male: The categorization – the...

Male: Oh, I'm sorry. Well, they kind of hit on that. It's just a question of I think to explain it – we know the GAC is bringing up a notion of categorization of gTLDs and it's a question that's probably longer term as to what, if anything, you guys are going to do about that, or whether you're still staying on the same path you've been going.

Male: So, just from my point of view, not ICANN's, categories are good in that they'll engender participation in the DNS. It'll create a label or a space for different communities to enter or provide a means, a self-identification that'll engender better participation.

Each proposal for a category seeks to get some relief from a policy recommendation so that we've had a proposal out of geographic names, a TLD doesn't have to sign an ICANN agreement because it's more like a ccTLD, a single user TLD doesn't have to use ICANN accredited registrars, a socio-economic TLD doesn't have to pay fees to ICANN. Certain other TLDs do not have to follow consensus policy.

So, just a really broad statement, that's probably inaccurate that that adds a lot of contractual compliance, complexity where a significant investment would be involved to ensure that those TLDs are meeting its restrictions and all of that contractual compliance effort really does not add to DNS stability, security or promotion of the level playing field. It's really to make sure that TLDs are living up to some artificial restriction that's put into their agreement.

So, recognizing that, there are good aspects to categories. First, would it be for ICANN or us to determine what those categories should be or should they be self-selected, because whatever we select will be wrong. And two, is there a way to create these categories of TLDs without giving relief from certain policy recommendations. Or if there are, is there a way to do it in a bright line way that doesn't add considerable contractual compliance cost or other things?

So, I see it adding a lot of complexity to something we're trying to keep as straightforward as possible. But, we want to listen about what people have to say about categories, because we understand they can bring value to the namespace.

David Maher: Go ahead.

Dan: Let me just say one last thing too in wrapping. Just, thank you all very much for your time here today and thank you also very much for all the constructive comments on the Applicant Guidebook and on the contracts. We tried to go through very carefully and we really appreciate all the time you guys spent on going through, almost line by line, the whole agreement, and we tried to follow through, line by line, and make wherever we could, all reasonable accommodation and try to pick those us.

And you know, it pains me. We didn't look forward to coming here and having to explain the places where we didn't agree to your changes, but thank you very much for the time and for your attention, and just want to look forward to hopefully closer to where you guys and we will all be happy with the contract going forward. So, thank you.

David Maher: Well, we appreciate your time and we thank you. And, I gather that one of the consensus points we have reached is that we need a meeting.

Male: And I'll do a good job of setting up (2:18:35 unintelligible).

David Maher: Very good. We appreciate that. Thanks again.

We probably have at least half an hour before the Board arrives for the lunch meeting, so I think we ought to be able to move along on our original agenda, which has been informally changed.

The next heading is GNSO Council updates, the report on the restructured GNSO meetings. **Jordi**, Edmon, Chuck, do you want to make any overall comments about the restructured GNSO, or should we move right into the steering committees and work teams?

Male: Well, if anybody has any questions, I'd be glad to answer them. Let's just handle it that way rather than me talking.

David Maher: Okay. Go ahead.

Male: Some of this fits into this topic here, but I wanted to bring up an email that was posted by Mike Rodenbaugh on the Council list and one that was discussed by the Council, which is as we all know, the Council has these working sessions on Saturday and Sunday prior to the meeting. Those sessions, some of which relate directly to Council activities, some of which like a discussion on new TLDs with ICANN staff, I view do not necessarily relate to Council activities.

Mike Rodenbaugh posted a note to Council that basically said that these meetings really should be reserved for Councilors only and that anyone else that attends these meetings should be put basically in the back – not at the table with everybody else – and that only the priority should be given to Council members that want to speak at these meetings, and only if time should they allow anybody else to speak, that we, the people that have been participating in those meetings, I believe the words are have enjoyed the privilege that others in the community have not had, and that that practice should immediately stop.

So essentially, the Council, as I believe, discussed this – and Chuck could elaborate – and has agreed to some modified restrictions on participation. And again, I'll let Chuck talk about what exactly happened.

But, one part that I definitely want to express a lot of frustration to and would like our councilors to express frustration to the rest of the Council is that the new gTLD, that if the Council is going to put in place rules like that, then any session that's on that weekend with those rules be limited only to things that are truly Council-related business, which would mean things like dropping new gTLDs from the discussion. Because, the entire two-hour discussion with staff on Saturday or Sunday – whenever it was, Sunday – related to individual councilors asking questions about individual issues that they had, many of them on behalf of their own TLDs

that they were advising on or had issues with, that had nothing to do with Council activities.

So, in that respect, the councilors enjoyed a privilege that no one else in the community actually had, meaning time alone with staff. I would like a very strong message sent to the Council that if you're going to follow these new rules that those types of meetings should not follow those rules.

Male: David.

David Maher: Yes, go ahead.

Male: I'm just wondering whether or not those actions are actually legitimate inside the ICANN bylaws. I mean, that's a good question on hand. My guess is if we saw those kinds of actions in other bodies in ICANN, it would create an uproar. But, it's always been my understanding that these meetings were open, they were – the participation especially in the first weekend, those are not – and correct me if I'm wrong – have they suddenly formalized this whole thing. Because, in the past, those have not been formal session. That's the question Chuck.

Are you working off an agenda with the seven-day posting requirements for motions or anything like this? As far as I know, the only formal Council meeting at the ICANN venue is the one that you guys are going to have tomorrow and that's it. And if that's the case, then why – I'm talking to you because maybe you (2:23:24 unintelligible) – why on God's green earth can they suddenly treat themselves with this kind of a preference? If that's the case, then we need to revisit that whole concept of this pre-meeting deal.

Chuck Gomes: I understand. I...

David Maher: Kerry, you've got stand up.

Kerry Carp: What Mike is asking is the way things were done at the outset, those pre-meetings were so that the councilors could discuss among themselves, behind closed doors, what was then going to be dealt with formally in full public, and Avry changed that. And there was a lot of peopled squawked. I squawked at the time. I mean, all of the sudden, we're constraining our ability to speak and work frankly. You were around then Ken.

Ken: Yes, and I guess what I would say very simply is the intent has changed entirely. So, the substance and the intent are two different things. Discussion among yourselves is not bringing in all these people and lobbying and advocating, stuff like that. If they want to go into a room and talk about next week's agenda, that's one thing. If they need background for next week's agenda, then it should be a formal request so the public knows what the hell is going on in there. But, to bring in people and use that as a venue for advocating is offensive to being with.

And then, to turn around and act like your indignant because somebody happens to be in the room and doesn't like the fact that you're able to abuse this process is just beyond acceptance.

Male: First of all, I made it very clear that the Registry Constituency would not be supportive of this kind of approach in looking at the Council as some sort of exclusive club. I'd like to point out though that the changes in opening up those meetings preceded Avry. Bruce did that. We did that, and then we had a lot of new gTLD meetings when we were open for other people.

So certainly, I'm not supportive of that suggestion that was put forward. We did make some changes sitting around the table, mainly because some of the new councilors and other councilors weren't able to get up there and sit at the table. So logistically, that change was made. But if you've noticed in the new gTLD session – of course, I was chairing it so I had a little control there. But, I didn't give any preference to councilors in terms of comments, other than maybe where I missed somebody behind me. But, I tried to first come first serve in terms of that.

I won't mention names in this case, but I can tell you that the constituency of the person who made this request is very upset with the request as it was made. The one thing that bothered me more than even the request itself, because I recognized – well, I'll just leave it at that – was how many councilors kind of chimed in in support of what he was suggesting. That bothered me more than the rest.

But, no definite decisions have been made. I think we'll probably try and give preference to councilors at the table, and if there's room for additional people to be at the table, but I think it goes against the Board recommendations in terms of openness and transparency and all the things we're trying to accomplish. So, I think we here are all on the same page.

Male: Did he ask for preferred teatime as well?

Male: He probably would.

Male: So again, my request is that the example of the new gTLD discussion be addressed at the Council meeting as to that it was inappropriate, that for those types of meetings – I'll figure out the best way to say it. But essentially, that session was appalling in the sense that there were councilors asking questions about their personal agendas as opposed to it being a Council working session, and if those are the types of meetings that are held, then the rules that that councilor has recommended are inappropriate for those types of meetings.

Male: Do you think this should be part of my campaign statement?

Male: It's after you're elected Chair.

Male: Okay.

David Maher: Anything else on that? If not, we can go to the working teams and steering committees.

First is policy, is that Jeff?

Jeff Newman: So, the policy process, the two work teams that make up a policy process steering committee had meetings. That's the PDP Work Team and the Working Group work team, both met during that weekend session. And I will have you know that those sessions, anyone could sit at the table.

They were productive, both of them. I think the Working Group work team, which has a much more narrow scope, is much further along. They have a document, a draft report that I think is going to be coming out for public comment fairly soon. I think they've made some good – these documents relate to the drafting of a charter for a working group and other internal procedures for a working group. So, I think that's moving along nicely.

The PDP Work Team had a good meeting. I think there's going to be a face-to-face meeting of that work team at some point early next year in January. Again, it's moving along. The goal is to hopefully come up with

recommendations for a new policy development process. So, that's pretty much the update.

David Maher: Thanks. Next is operations. Chuck...

Chuck Gomes: Sure. I think probably one of the most timely things that's happening right now is from the work team that Ray is chairing. So, if it's all right, I'll ask Ray to talk about that one, then we can jump into the others as well.

Ray Fassett: Real quick to kind of cut to it, tomorrow, the Council is going to vote on the new procedures that, as we've discussed at previous meetings, have gone through the entire vetting process, now will be in front of the Council tomorrow vote, and that is what will enable the Council to at least seat.

Now, with that said, as I've said in updates all along, we addressed the areas of the Council rules of procedure that were absolutely necessary to seat the Council as part of Seoul. There's still some open points for this work team. We talked about some of those. Should the chair – does a chair candidate, does it need to be a member of the Council, those kinds of things.

So, still more work to do, but the highlight is that hopefully tomorrow, the new procedures will be adopted and that enables the bicameral structure, I think, to begin, which is I think very important to our stakeholder group for that to happen.

David Maher: Any questions?

Chuck Gomes: And of course, the Council's voting on a motion with regard to those procedures, the subset of procedures tomorrow. That'll be the first significant item on the agenda to approve those procedures tomorrow.

David Maher: Thanks. Anyone else? Go ahead.

Male: So, just procedurally, our constituency is saying to our reps to approve them, right?

Chuck Gomes: That's a very good question Jordi and Edmon and I certainly need to know that. I'm assuming that's the case, but please tell us if that's different.

Okay, hearing nothing otherwise, we'll assume that that's okay. And if there's any problems with those procedures, just contact Ray.

So Michael, do you want to talk about the constituency stakeholder group operations work team?

Michael: Do I have a choice? No, okay.

We're actually making some pretty good progress in that group now. There were a lot of procedural questions and debates, and so forth early on with this group. It's basically, for those of you who aren't aware; it's broken up into two work areas.

The first thing we were tackling were the recommendations actually, the primary recommendations. And the second one is really about outreach. So, we've been doing the primary recommendations on how the constituencies, and now stakeholder groups as well, with best practices, how they were operate and so forth. We broke that into four subtasks. The fourth one has actually now been put through the OSC. It was accepted. So, we're excited about that.

The other three are close to final drafts or at final draft, and we're working through as a group to make our final edits, because there were subtask teams – when I say final draft, I mean the subtask team's final draft and the whole work team has to obviously review and get their comments in. So, it is progressing, although unfortunately, slower than we had hoped.

Chuck Gomes: And the fourth task that he said was accepted by the OSC is the one recommending a toolkit of services for stakeholder groups and constituencies, one that I've mentioned on our calls I think will be very beneficial to us. And by the way, other OSC members from other constituencies and stakeholder groups concurred totally that it would be very good to get some of those services available as soon as possible.

So hopefully, that'll get moving now that the next step is for that to go to the Council, and that will happen shortly.

Then we have the communications work team. Steve...

Steve Crocker: Sure. The communications and coordination working group, Mason's the Chair and I'm the Vice Chair. We're in the final stages of finishing those recommendations. We may have a recommendation that's approved by

all the members, even as early as today or tomorrow. We're hoping to have it ready for submission in the next couple of days.

I've said it before, but most significantly, this involves a redesign of the GNSO Website. The old one was pretty flat and not very easy to navigate. The new one, at least in theory so far, looks to be considerably better. They've gone to the trouble within ICANN staff and the web design team, of actually building it out in advance of even finishing the recommendations. They're already getting a running head start, so I think look forward to seeing some recommendations to the GNSO soon.

David Maher: Any questions or comments on that? Well, if not, on our agenda, the next two items I think have not only been covered, they've been beaten to death. So that brings us to the updates, if needed, first on the joint ALAC drafting team. Anyone have anything to say about that? Apparently not.

The next one is the independent review.

Male: (2:35:50 Unintelligible).

David Maher: Pardon me. The transfer, I'm sorry. Barbara's not here, and I don't believe she's on the phone. So, we'll pass that.

Male: Yes. Eric was here, but I think he stepped out. So, we maybe can get an update in a little bit.

Female: David.

David Maher: Go head.

Female: (2:36:19 Unintelligible).

David Maher: I'm sorry, I didn't hear her.

Male: Barbara's not on the phone.

David Maher: Okay, thank you.

The next heading, registration abuse policies. Greg Aaron, Greg...

Male: He's not here David. I'll give the update on his behalf.

David Maher: Thank you.

Male: So, what I have from Greg is that the group currently is not at any level where they have recommendations yet, but they're still exploring information. For example, they've got a subgroup working at looking at registrar registrant contracts, to look even at lack of uniformity that might impact abuse. So, that is one element.

Their estimates for actually producing something we can review and examine, the working group is hoping to get something out prior to the next ICANN meeting.

David Maher: Thank you. The next item is the post expiration domain name recovery working group, **Pedner**. I attended that briefly yesterday. Michael, do you want to go ahead?

Michael: Well, I think a lot of us were at that one. It's still, I guess, really the best way to describe it is in the information-gathering phase. We've put a lot of work into a questionnaire and information is starting to come back from different sources. People are trying to understand actual practices around expiration at the different registrars, what's actually happening, what they're doing, and that's what the information gathering is about.

It was interesting yesterday, because I think the group has been very careful, very diplomatic and tactful about dancing around issues and trying to decide where the focus of the work should be and what we're really trying to accomplish our self. Wherein I think yesterday, we started to see some more strong statements.

And Jeff, you wanted to add something to that.

Jeff Newman: Well, it's not a question. I mean, I noticed in the meeting, I was only in part of it. But, it seemed like extremely dominated by registrars. Is that the normal composition or was it just because it was an ICANN meeting? And if so, it worries me as to whether that group can actually get some work done if it's all registrars and not really too many members from the rest of the community.

Marika Konings: This is Marika Konings. I'm the policy staff support person for that group and yes, there are a lot of registrars on that group, as of course, a lot of issues affect them. There are also other members on this group, and I do think thanks to the meeting yesterday, we have some new members

signing up. But, I would encourage anyone here interested in the issue and wanting to give another voice as well on the table to join the group.

As said, we're in the beginning of the discussion, so it would be good to have a very broad group there, but the majority of members at this stage is from the registrar community.

Jeff Newman: So, how have you found that – does it get in the way, is it helpful? Is there some input that can be provided to I guess the working group work team, because usually, working groups are open to whoever wants to come in. But, if it seems like a particular group of stacking your working group in order to prevent certain things from happening, not that I'm saying that's happening here, but maybe any feedback you all could provide might help educate the rest of us.

Marika: Well, I think one of the issues is for example if you have some members from other constituencies not showing up for meetings, that you might have meetings that are very one sided. And of course, the chair is called to say, "Well, we can discuss, but to realistic, we don't have wide representation on the call," even though we might have a lot of members on the call. So for now, the debate has gone to have discussions, but of course, with many registrar representatives there and very strong views on the issue, there's a lot of discussion from their side of the community.

Male: So, just to kind of recap how some of the meetings have gone, I think one of the things that slowed down the conversation and took us to a real information gathering phase right out of the gate, at the opening meeting, a number of registrars made very strong statements about their position on this gray area of concern around an expired domain and who has the right to do what with it at that time. So, that was a big issue laid out on the table. They made it very clear that they wouldn't want to see what they feel is their ability to compete or conduct their business impaired, I think is the clean and diplomatic way to put it.

On the other hand, at the same time, the registrars did say that they really believe that the consumers should be protected and they're willing to support and effective effort. So, we started to try and investigate exactly what different registrars may be doing at the expiration so we understand that better. We've been moving toward, more and more I think, a consensus that one of the areas of primary concern is whether or not the redemption grace period, as it stands today, is viable and effective as part of that discussion for consumer protection.

David Maher: There was at least one registrar who took a view that reminded me of legal history. The issue of freedom of contract, which was basically decided, at least, at the United States during the new deal after President Roosevelt was able to make some appointments to the Supreme Court.

The original concept of freedom of contract included the concept that minors and workers in sweatshops had freedom of contract. They could agree to work for \$1.00 a day or whatever it was. **Rob Hall** still believes that that's the case, that when you sign a registration agreement for one year, it's one year and that's it. I'm not sure reminding Rob of legal history will help, but I was amused at his kind of thinking on the subject.

Male: So, I don't have anything more David.

David Maher: Okay. These are Chuck's new agenda items. It's up to you.

Chuck Gomes: Sure, and I'll be fairly brief. But, I reviewed the Non-Com review finalization working group report. It's a draft report out for comment right now. They actually ask for feedback. They have two lists of questions in there. I won't go through those, but I'm going to see if we can't impose on our previous Non-Com members maybe to help us respond to those questions. That would be my sessions. Ken and Caroline, and I don't know if Ron's going to be able to do it as well.

But on Page 13, they have four bulleted questions at the top that they're asking for feedback on, and the same thing on Page 15. There's three things there that they're asking input on, three options. And, I would think that you guys are the best to give us your opinions on that.

And then, on Page 16, there's a procedure for removing a Non-Com member, and the only question I had there is does the appointing organization get the opportunity to replace the member? I doesn't seem to be clear on that. You guys probably didn't talk about this in the Non-Com, but that would be the only other area where we might want to put a little comment in.

So, I guess my question is would Caroline and Ken be willing to work together to respond to those things, and then it can come to the constituency?

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- Male: I'll check with Ron to see if he'll have the opportunity to (2:45:13 unintelligible).
- Chuck Gomes: I understand. The comment period, I don't have it in front of me. Does anybody have...?
- Thomas: Probably to November is the deadline for public comments.
- Chuck Gomes: What date in November?
- Thomas: 22, November.
- Chuck Gomes: It's 22; I thought maybe it was the same. That 22 November date covers a lot of things.
- Thomas: I'll briefly add that we have a session tomorrow morning at 11:00 in Garnet to discuss the report. In that session, I'm going to focus, at least the presentation part, on very few of the recommendations and the one that we are most in need of input on is the one about the composition of the Nominating Committee.
- Chuck Gomes: So Thomas, I should have realized this was a golden opportunity with you here. On that one about the procedures for removing a Non-Com member, was it addressed whether or not if it's an appointing organization that did that, that they would be able to replace that member?
- Thomas: I don't remember the discussion in detail. When you just said it, I was actually surprised that we didn't say there is a replacement. So, my suspicious would be that the intent was the person should be replaced, but if we don't say that clearly, that's probably an instincts thing.
- Chuck Gomes: Okay.
- Male: So, in their composition, which members were – so, one or two per stakeholder group I guess would – my guess is the commercial stakeholder group would have an issue with that, right, because you're taking it from a small business, a large business, an ISP, and IP, so you're taking it from five down to two.
- Male: Is that four down to...

Thomas: The phrase we used in discussing those proposals was "suicide proposal." The purpose really is to tease out where the sensitivities and the needs are.

Male: But ours would still remain the same.

Male: One or two, it could go up.

Male: Well, they say a recommendation of 13 total, so I think two from each stakeholder group would put it way over.

Chuck Gomes: Yes, and I don't think we want it to be too big. It becomes dysfunctional. So David, that's all I had.

David Maher: Okay, thank you.

Chuck Gomes: Well, then I've got the SSAC which is the next one on it. It's even shorter. I personally don't have any problem with the SSAC review, but there was one item, working group conclusions with regard to organizational clarity and charter on Page 6. It said the Board will decide on the partial or full disclosure of these reports to SSAC as appropriate. I was just surprised that the Board, and I think Steve's gone, Thomas is still here. Do we have any other Board members here now?

It seems like a level of detail for the Board, and this is a kind of minor issue. But, it certainly doesn't seem like that the Board of Directors should be getting at this level of detail in terms of the – I don't have any problem with them doing that. It just seems like a level of detail that is not appropriate for a Board of Directors to be doing, that staff could do it, but that's all I had on that. And, I'm not even sure that's enough for us to worry about as a comment, but that's just my personal views.

Thomas: Very briefly, I think I can add a little bit to that particular recommendation. I suspect part of that is to make sure that the accountability for the staff and for the staff's operations is really in place. I think that is part of the reason why they are proposing an escalation up to the Board level here.

Chuck Gomes: Thanks.

David Maher: Okay, thanks. It's now 20 after 12:00. I believe the Board will be here in about ten minutes. I propose a break and at this time, if we can invite our non-member, non-director, non-staff guests to leave, I'd appreciate it.

Male: And also, we need to try and...

David Maher: We're going into an executive closed session.

Male: We need to try and free up some spots around the table for the Board.

David Maher: The open session will resume at 2:00 p.m.