

**GNSO
Operations Steering Committee (OSC) GNSO Council Operations Work Team
11 November 2009 at 17:00 UTC**

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Participants on the Call:

Ray Fasset - Registries
Wolf Ulrich Knobon - ISPC
Ron Andruff - CBUC
Avri Doria - NCSG

Staff:

Rob Hoggarth
Ken Bour
Julie Hedlund
Glen de Saint Gery
Gisella Gruber-White

Apologies:

Tony Holmes - ISP

Coordinator: This call is now recorded, please go ahead.

Gisella Gruber-White: Thank you, (Louise). Good morning, good afternoon, good evening to everyone. On today's call we have Ron Andruff, Avri Doria, Ray Fassett, Wolf-Ulrich Knobon on staff we have Julie Hedlund, Ken Bour, Rob Hoggarth and myself, Gisella Gruber-White. We do have apologies from Tony Holmes. And if I could please just remind everyone to state their names. Thank you, over to you Ray.

Ray Fassett: Great, thank you. Ray Fassett here. First bit of housekeeping, I would like to say that Avri has formally joined the work team so if we could update that on

the Wiki page, etcetera, that would be good. Representing which stakeholder group Avri? Avri, you there?

Okay well...

Julie Hedlund: Anyway I'll update the Wiki.

Ray Fassett: Yeah, update the Wiki. Okay. All right so that's housekeeping. Quick summary, I think we had a productive session in Seoul. As we know the operating procedures were approved by council so that was good progress made.

Now one thing that did occur that I think we're all aware of is that there was a document management issue that occurred from the time the work team submitted its final, if you will, edits to the document that kind of got reformatted - not the same document that was reformatted happened to be the last version that we completed.

And unfortunately it was the incorrect document that went to public comment etcetera. And that became the document that was approved by the council, the procedures. So - and this was recognized in Seoul and understood in Seoul.

And the remedy on this was going to be to double back right after the Seoul meeting and submit back to council the fresh document with the edits. So this - and this required a bit of work, you know, doubling back to getting that document that we completed reformatted into a, you know, a user-friendly format required a lot of work, you know, to do that.

And so they had to double back and get the correct version from us - when I say they I mean ICANN staff, Rob Hoggarth with the assistance of Julie at our request to do that. So they've done that now and this version with the edits will now be going to council for their consideration and approval.

Is there any questions on this part? I have forwarded now - I have gotten the document from Rob. I have forwarded that document to the list. I haven't seen it pop through for me. I just did it maybe 10 minutes ago. But these are edits that we've already discussed and looked at. Are there any questions on this though - procedurally?

Rob Hoggarth: Ray, this is Rob. I'd just like to acknowledge Ken Bour's tremendous work on helping pull that together.

Ray Fassett: Okay.

((Crosstalk))

Rob Hoggarth: ...credit for that.

Ray Fassett: Great, great. Thank you, Ken. Yeah, obviously when people asked the question on, you know, ICANN staff support, is it important, I think we can attest it is because this was a pretty big project for them to have to double back to.

It was just an honest error that could happen to anybody in the document management process. And then double back and catch these edits again; I have looked at it myself and they did a really nice job. It caught them - they got them. And it was a lot of work so thank you for doing that.

Now procedurally is there any questions on what is going on here now with the approvals procedure? If not I think we can move on to some more substantive issues yet in front of us.

Ken Bour: Ray, this is Ken Bour, just a quick one. You're aware that the - that Chuck Gomes has yet made another couple of minor changes to that document and that's the one that - is that the one you're working from?

Ray Fassett: Yeah, actually that's the one I did see today. I quickly - that's exactly what I actually zeroed in on, okay, what did Chuck do? All right, there were no other edits here right? You know, I just want - so I quickly looked at it. I only saw one and I don't even recall what it was. It really was nothing, it was - was there another one? There was nothing substantive there I saw.

Ken Bour: No there - I agree with that. I caught several like in 2.2(i)(i) it said in the case of a tie - and he put in for the most votes between two candidates, things like that.

Ray Fassett: Yeah.

Ken Bour: He added the word council before vice chair which just is clarification. And I think that was really - I didn't catch much else either.

Ray Fassett: Yeah, it's really - I don't think there's anything substantive. First of all I don't think Chuck would go there just from working with him on other things and experience. But even with that you might look at it. I just didn't see anything substantive to really - I don't think our work team really needs to dwell on...

Ken Bour: Right. There was one more; in 2.2(i)(v) of IV - Roman Numeral IV it originally said in the in the event that and he took that out and just said in case neither candidate so I mean again just sort of English.

Ray Fassett: Okay so those are some examples - maybe all the examples that Chuck had. Does anybody have any comments on whether we need to go in and review Chuck's comments or edits that he made now to this latest version? Anybody have any concerns?

Ron Andruff: No concerns on my side. This is Ron.

((Crosstalk))

Ray Fassett: Okay very good so...

Wolf-Ulrich Knoben: Ray, Wolf speaking here. Did you send the last version already?

Ray Fassett: Yeah.

Wolf-Ulrich Knoben: I did not...

((Crosstalk))

Wolf-Ulrich Knoben: ...receive that.

Ray Fassett: I did. Again I haven't gotten it. Julie do you want to go ahead and send it out?

Julie Hedlund: Yeah, let me send it. I don't know if maybe your access to the list is having problems but let me send it to everyone right now.

Ray Fassett: Okay so if you get it from me and Julie you'll know it's the same thing.

Wolf-Ulrich Knoben: Okay thanks.

Ray Fassett: Okay and this ties into something that Wolf emailed earlier. There is a - an Item 3, a motion Wolf, can you explain what that motion is real quick so we understand exactly what the whole picture here? What is that motion?

Wolf-Ulrich Knoben: Well as I understand this motion refers to the small amendments Chuck did, you know, that the - there should be a motion to accept these small edits. That's it...

Ray Fassett: Right, a motion to the council?

Wolf-Ulrich Knoben: Yes.

Ray Fassett: Okay.

Wolf-Ulrich Knoben: So I think just formally what Chuck is going to do is for the next council meeting is to tell the councilors, okay, that's what he would like to be - get amended so and he would like to formally - make formal amendment to a motion.

Ray Fassett: Okay. So that just kind of gives the full circle here of what's going on so if you see something in there about how the council approved the new rules of procedure I don't want anybody on the work team thinking well wait a minute what was that all about? So we all know what's going on and why right? Okay that's important.

Okay so anything else in that email Wolf that you wanted to go over?

Wolf-Ulrich Knoben: No, no, that - that was, you know, just to keep you informed about that so...

Ray Fassett: Great.

Wolf-Ulrich Knoben: That's it.

Ray Fassett: Great. Okay so we can maybe move on to a substantive issue that came out of the Seoul meeting, the biggest feedback I think we got on these rules of procedure again was the issue of how should abstentions be handled in the voting process, right?

And the reason I asked Ken to stay on is because he did some research on this. We talked about it in Seoul. There are different options. Ken went out and looked at what - how do other associations or how do other industries handle this question.

And Ken, why don't you go ahead and just give the group a brief summary of what you kind of found impartially there?

Ken Bour: Will be happy to - give it a try. I was scrolling through my document to see if I could come up with a crisp way to do that. I'm not sure if - does everybody have a copy of that paper? It was posted on the public comment forum related to the council operating procedures. I'm not sure if it's been circulated to your team separately.

Julie Hedlund: It hasn't Ken.

Ken Bour: Okay.

Julie Hedlund: It's Julie.

Ken Bour: All right so that - okay..

Ray Fassett: That's okay.

Ken Bour: Yeah, let me just - that helps me to know how to approach this a little bit.

Ray Fassett: Yeah, yeah.

Ken Bour: In essence what I did in the paper is I did spend some time on the Internet researching the subject of abstentions which by the way also dovetails very closely with conflicts of interest and I'll try to explain that connection in a minute.

And also what people do with calculations when abstentions occur. And that turns out I think to be the sort of fundamental question here is if someone abstains in the old GNSO policy or the current operating rules or the - whatever for Seoul, the denominators in making determinations about

majorities or 2/3 or 75 - what ever the calculations are, the denominators never change.

So what you end up having then is somebody who is ready to vote says I abstain but that abstention in effect gets treated like a no in the sense that the way the - all the voting procedures are - were written and are now written it requires a certain amount of yes votes to pass any motion.

And so anything that isn't a yes is effectively a no right? And so the question that I was researching was when - in other organizations, government and others, when people abstain do they change the denominators as well as the numerator in trying to figure out whether you have a majority.

So to use a simple example I've got five people on a committee and we're going to take a vote. I need three in a majority to pass a motion and one person abstains right? Now if that person abstains do I still need three yes votes or because that abstention occurs do I change the denominator from five to four - now in that case I did a bad math example because it still requires three right, two is not a majority.

But you get the idea right?

Ray Fassett: Yeah, yeah.

Ken Bour: In some instances if you change the denominator it takes one less vote or two less votes depending on how many abstentions there are in order to pass the measure.

Okay so what did I find? A mixed bag of course and there's very few things in life that are commonly done by everybody. But what I found is that generally speaking abstentions are done for sort of two basic reasons; we're going to call them voluntary reasons and involuntary reasons.

If I abstain from a vote because for example I'm not familiar with the issue, I haven't read up on it or maybe there's - I have some kind of personal reason for just not wanting to vote that's called a voluntary abstention. And in almost all cases I looked at no change is made to the denominator when people voluntarily abstain.

In essence it's treated like they just weren't there, right? If you just didn't attend the meeting well that, you know, your vote doesn't count but we don't change any of the calculations as a result of that.

The second case we'll call involuntary abstentions. Many organizations make a very significant difference between - where situations exist where they don't want people voting. They actually say look if you are in this situation you must not vote.

And in addition to not voting you must not participate in the discussions, etcetera, etcetera because to do so is a serious sort of conflict of interest. And that's where this tie-in comes in as I mentioned earlier.

So in cases where people have - we'll call them material conflicts of interest, to differentiate from ones that - and when I say the word material I mean that, you know, the organization at large would say looking at this particular person's situation that the conflict of interest is serious and would affect the whole organization's operations if that person were to take part.

I could - myself individually think I have a conflict of interest, right. And I could say look I'm going to abstain because I have a conflict of interest. But if I described it everybody else in the organization would say well wait a minute that's not material and so we're not going to give you a conflict of interest label for that abstention, that's going to be a voluntary one.

So that's why I use the word material here to differentiate from those that are generally regarded as serious. Okay in the case of a material conflict of

interest then almost every organization I looked at changes the denominator. I couldn't find any examples of cases where somebody said I have a material conflict of interest and I'm abstaining for that reason.

It's involuntary on my part meaning that if anybody else looked at the situation they would say yep, you absolutely cannot vote here. And generally those material conflicts of interest relate to things like I'm taking money from somebody that's involved in the decision. I have a consulting relationship, I have some kind of financial interest in the outcome of the decision and as a result I am materially conflicted here.

And in those cases we would change the denominator. Okay so that's the paper then after going through some of this early digestive material what I did was I actually created a set of potential changes to the operating procedures under a heading that goes, a way forward, potential additions and modifications to the new GNSO procedures.

It starts with something called the Duty of Councilors which basically says everybody's got a duty to stay involved with the issues, keep track of what's going on and participate in voting wherever possible.

However, recognizing that sometimes that doesn't always happen we provide a paragraph called voluntary abstentions. And there are some examples that illustrate what those things could be for example not being adequately informed or haven't been in the discussions, having some religious or other kind of nonmaterial conflict that - those are all examples that would potentially allow someone to abstain but it would not change the denominators.

And then we create a category called material conflicts of interest, give some examples of what would give rise to that, for example this economic interest idea and other assorted issues that - there are actually not too many of those.

And then we talk about some scenarios when conflicts - material conflicts of interest could arise and sort of what to do about them right. Because it's also possible especially in the GNSO where if I'm a representative of the let's just say the intellectual property constituency and I say I have a material conflict of interest I could go back to my constituency and I could say hey guys I am conflicted here but I am supposed to vote.

So why don't you tell me how I should vote in this situation absolving me of my conflict and you give me the answer I'm supposed to go - I'm representing you in this case, I am not voting my own conscience. And that would be like for an example of a way to resolve a material conflict of interest which would still allow a member to vote and would not require a change in the denominators.

Ray Fassett: All right so let me just stop you there - everything's making sense and I just want to interrupt. Now there are some stakeholder groups that require in their charters that their council reps represent the views of their constituency and then there are other stakeholder groups that don't have that requirement.

I believe the business constituency for example does not require their reps to necessarily at all times be representing the views of that stakeholder group where I can say in the registry stakeholder group it is a requirement for our reps to represent the views of the group.

Ron Andruff: I can interject there Ray, it's Ron with BC.

Ray Fassett: Yeah.

Ron Andruff: We have, in the new charter, the representatives have to vote along the lines of as directed by the constituency.

Ray Fassett: Okay.

((Crosstalk))

Ken Bour: And this is Ken again. I can tell you that I was fortunate to attend the Internet Service Providers meeting in Seoul. And that subject also came up and they're modifying their charter I believe to make that clear also.

((Crosstalk))

Ray Fassett: So in theory when we're talking about conflicts we're talking about conflict as it relates to the ability of the rep to represent the views of their stakeholder group not a conflict as it pertains to the issue at hand being somehow advantageous to the individual's rep's interests?

Ken Bour: There is an example that was pointed out to me I think it was by Kristina Rosette and seconded by Steve Metalitz, where in their situation as lawyers they also are obligated to follow their legal - ethical code of conduct. And if she was saying something like if I have a conflict of interest, that my profession would say it's a conflict you can't resolve it; the conflict is there.

And I didn't - we didn't have time in Seoul to really follow through on that because I think I would have said well what about if you go back to your constituency and say tell me how to vote that would - would that be okay and we just didn't through that discussion.

Ray Fassett: Yeah, so that's really to me I think a question, others can chime in but I think it is. I mean, where is the conflict of interest, is it between you and your constituency or let's call them stakeholder groups? Is it between you and the group you're representing?

Or what - where, we need to understand I think as a work team - we understand that there's conflicts of interest, we understand that, you know, the question of how it should impact it nominally or not.

What we don't understand is where is the conflict. Is the conflict between your ability to represent your group's interests because if that's a conflict that you maybe should not be a rep. You know, so, I mean, that's kind of off the topic but that's kind of what it drives.

So I don't know if the conflict of interest that we're talking about it as it affects voting has to do with the issue at hand or if it has to do with the rep's ability to represent their group's interests.

((Crosstalk))

Ray Fassett: ...group charters especially - think group charters are requiring them across the board which we don't know, we've got to get that answer, to represent their group interests. That's something we need to know versus maybe some stakeholders groups that don't have that requirement which changes the question for us. So any thoughts on this?

Ron Andruff: It's Ron. I have a, you know, a real problem with the fact that it wasn't in our previous charter and that the - that one of our representatives actually made that comment that he had the right to make whatever decisions he wanted unilaterally.

Ray Fassett: In Seoul right, somebody said that?

Ron Andruff: That's right. That's right.

Ray Fassett: That's right, I heard that too. Yeah.

Ron Andruff: And so we were really upset about that. But parking that for a moment I think that it should be incumbent upon all the constituencies -- and maybe we should be - considering we've got enough staff members on this call and that you are looking at the charters -- we should be enforcing that representatives who are sitting at council level are speaking on behalf of the constituency,

because the only ones who do not speak on behalf of the constituency are the non-com reps.

So there's a very clear distinction there and that's important that we get that right.

Ken Bour: Ron, this is Ken Bour. Most of the charters do have such language. And after this next set of rewrites I think they probably all will. But even the ones that have the language and I'm not sure how you guys dealt with this in yours yet but they'll say something like in the event that the constituency or the stakeholder group does not have a position formally on some motion then the councilor is allowed to vote their, you know, their conscience.

And I suppose that in that case if the person said oh I have a conflict of interest and I don't have a position for my constituency we might have one of these cases. It's going to be extremely rare I would think but it could happen.

Ron Andruff: I don't see the reason - I'm sorry is someone else trying to speak?

Avri Doria: Yeah, this is Avri. I'd like to get in the queue to make a comment, that's all.

Ray Fassett: Okay, Ron then Avri.

Ron Andruff: I wanted to just say that I don't see that there should ever be a situation where the representative votes their conscience. It should be either they're voting on behalf of their constituency or they're abstaining because the person sitting at that chair at that table is not an individual, they are representatives of that organization.

So that's - this is what I'm trying to drive at is I think that we need to tighten up these elements that there should not be someone voting their conscience other than the non-coms because that's specifically why the non-coms have been invited.

Maybe Avri can share some more light on that.

Ray Fassett: Avri, go ahead.

Avri Doria: Okay actually I was going to talk to the - on the basis of the NCSG and the situation becomes slightly more complicated there. They do not have a history in NCSG or I believe an intention in CSG of enforcing party discipline on any votes.

It's a very diverse group where there'll be many different points of view expressed within the stakeholder group on many of the different issues, you know, it really does advertise itself as sort of a big tent in terms of viewpoints, positions and whatever.

So it's not that the council members will be voting their own conscience as it were but they are representatives if they don't vote in a way that represents at least some segment of the NCSG they'll end up getting voted out.

So it's really a representational democracy point of view is we elect someone we trust to go in there and do what, you know, is reasonable within the constituency we're at but there's rarely a case where party discipline of everyone must vote this way is going to be called; it's just not what they do. It's a representational system.

Ray Fassett: Actually I just want to be clear on that, that's a good point but even in the registry constituency it's a representational system too. What happens is that our council reps come back to the constituency, explain what's coming up for a vote, allow for a discussion on that and then gather the consensus of the group and then goes back to the council and votes accordingly.

So it's representational too even though it may state in the stakeholder group charter that the rep is to represent the interests of the group. So it's just a matter of how you go about it.

I think what you're saying, Avri is, the system in the non-commercial stakeholder group is perhaps not as formal in that before a rep can go in and actually perform a vote there's not a formal process where that vote - what is being voted on is not discussed in the stakeholder group. Is that correct?

Avri Doria: It is discussed. There's an open discussion on, you know, here's what we're going to be voting on, and then there'll be a discussion on it. And then the council member will take that and go oh there's not perhaps a formal process of therefore we decide that the NCSG believes, you know, 50% of them believe this and 20% of them believe that so let's assign the votes.

Ray Fassett: Oh right.

Avri Doria: There is a certain take it to the group, have discussions, get feedback and then based on that feedback decide on your vote and if your vote is inconsistent then it doesn't pass the sniff test and then you'll get yelled at and then maybe you'll get replaced. But...

Ray Fassett: Okay so it's just really the same thing. So the rep - NC stakeholder group rep that goes and does the vote is representing what the discussion was about. So it would be at that point of discussion that if the group felt that, you know, to vote a certain way it would be at that point the rep would say to the group well I'm sorry I can't vote that way I have a conflict.

That is where that would come out wouldn't it?

Avri Doria: Okay, I guess so. Now I have one question with the conflict because one of the things that was brought out in the discussion was that if you have a

conflict like that not only do you abstain from voting but you abstain from discussing the topic at any point in any of the discussion.

And so would there be an assumption that one would not be qualified for abstaining if they had ever spoken to the topic?

Ray Fassett: So let's say something is being voted on at the council level, the stakeholder group rep is going back to their council representatives for discussion on - for discussion on what the subject matter is. Immediately right there the rep would have to say I cannot discuss this with my own group. I can't discuss it with you because I have a conflict of interest. That's where that would happen.

Does that make sense? In other words the conflict isn't at the council level, the conflict is at the stakeholder group level.

Wolf-Ulrich Knoben: Yes, yes. So it's Wolf speaking. So that's the point I think from what I see. Because we had also this discussion in Seoul in our constituency about that, and it's very clear that we will have before every council meeting we shall have a call for the - an (ISBDP) call and talking about discussing all the potential motions now and then fix our goal, let me say the situation - position on that.

So that's how we are going to deal with. And that makes it that the conflict shall be on a constituency or (unintelligible). That's what I think so.

Ray Fassett: Yeah and in thinking this out loud I'm having difficulty rationalizing if there's a conflict at the stakeholder group level why the denominator needs to change. I would call that a voluntary conflict not an involuntary conflict.

Wolf-Ulrich Knoben: Yes that's - Wolf speaking again. The - to the basic point (unintelligible) so for me is - it's - I could accept, you know, if we find really a clear definition of what is material conflict of...

Ray Fassett: Yeah, yeah, yeah.

Wolf-Ulrich Knoben: But because so what I would like to avoid is that - that somebody comes up and says okay I have a conflict of interest and okay then it's just trusting okay that there's a kind of it but there is no material behind that or maybe no material. So the question is what kind of material is behind it that conflicts and I understood Ken before like he was saying okay there maybe a discussion then on council - on the council whether to accept it as material or not.

Ray Fassett: Right, so the question, yeah, so the question is something like this, I think, if I'm understanding, it would be the council reps states to other council members I have a conflict with my stakeholder group; I'm going to need to abstain on this vote.

And then the question to us is, is that a material conflict or an immaterial conflict? And at the council level now, is it a material conflict or immaterial conflict?

Wolf-Ulrich Knoben: But - sorry so Wolf speaking again. So I'm not sure that we should have on council level that kind of discussion because that a never ending...

Ray Fassett: Well no I mean for our work team - our work team, I'm just throwing out the question the conflict does not sit at the council level, if we agree on that, the conflict sits at the stakeholder group level. The question to our work team is when the rep has to say I have a conflict because my stakeholder group wants me to vote a certain way that I have a conflict with.

Should that be a material conflict as it pertains to how to count abstentions as part of the vote or should that be an immaterial conflict as how you count abstentions as part of a vote?

Ken Bour: Ray, this is Ken Bour. It may - I understand the question you're asking it might be helpful to have some examples to deal with. It's hard for me just to think about that and understand it as being material if it exists between the councilor and his or her constituency or stakeholder group.

Ray Fassett: Well...

Ken Bour: But, you know, even if we don't deal with that question, let's assume it could be material, right, let's just assume that for a moment. There still are other ways to resolve it without having to change the denominator.

Ray Fassett: Okay.

Ken Bour: Yeah, for example maybe we could introduce something in the way of a proxy voting where if I'm one of N number of councilors from a stakeholder group and I have a conflict with my stakeholder group about some particular issue, maybe my vote proxies over to the other councilor and the constituency says you're voting now for yourself and for this other person who's conflicted on this vote.

Wolf-Ulrich Knoben: Ken, that's a little complicated I would say because I understand that proxy voting is only feasible on council level. It means the proxy must be a councilor (unintelligible) from another stakeholder group maybe.

Ken Bour: It could be one of the (NCA)s that asked to proxy that vote, right, every stakeholder group has one so.

Wolf-Ulrich Knoben: Sure, sure but okay that is - I wouldn't say that's feasible. So from my point of view so just in case if I had a personal conflict of interest which is not accepted as being material then I go for a proxy voting and that - what you think?

Ken Bour: No, only if it was material. If it's immaterial then it would be voluntary and the way at least I've drafted these tentative procedures there would be no change in the denominator.

But I would say - what I was saying to Ray is you could allow for the possibility of a material conflict of interest even between the councilor and his or her organization - representative organization, whether it's a stakeholder group or a constituency - and still have a provision that allows for a resolution to that conflict that doesn't change the denominator, that's all.

Ray Fassett: And that would be by awarding your vote to another rep.

Ken Bour: Yes.

Ray Fassett: Yeah in your constituency - stakeholder group.

Ken Bour: Correct. Correct.

Wolf-Ulrich Knoben: For me it's not that clear so what I would like to have is really a clear position and a clear rule about - so it's...

Ray Fassett: I'd like to understand too, how can a conflict of interest happen at the council level? I understand how it can happen at the stakeholder group level. And I'm not clear how a conflict of interest can even happen at the council level. If you're just there representing the views of your stakeholder group where could there even be a conflict?

Ron Andruff: Well Ray let's say that someone's there representing the views of the registry constituency but they're - and the view of the constituency has something to do with the idea of new top level domains and the representative who's speaking is an applicant of a new TLD; there is a conflict in so much as he or she is an applicant. And while they're voting the vote of the registry that may fall in the favor of that applicant there's still that conflict.

So the whole - I think what Ken's saying is if there's any sense that there might be a conflict at that point then you would just step back, you know, to recuse from that that, that individual recuse themselves and say...

Ray Fassett: Let me counter...

Ron Andruff: ...I'll pass that vote off to someone else to make that call.

Ray Fassett: Well let me counter that example if you don't mind okay?

Ron Andruff: Please.

Ray Fassett: So this rep has - is a potential applicant of a new TLD. He would disclose that - he or she would have to - they're the rep for their group; they would have - a vote is coming up, a discussion is coming up, I want to disclose to my own stakeholder group because it's my responsibility that we are going to be an applicant. Does anybody mind that I'm going to vote on this in the group and in the stakeholder group.

So the registries group says no we understand, yeah, that you may be doing that in a private matter and a private business initiative, whatever it is you're doing. We trust that you're still going to represent what we're asking you through how to represent us.

Again it's at the stakeholder group level.

Ron Andruff: But that's fair enough there but the issue may arise that someone sitting at another stakeholder group may say I didn't see anything in the declaration of interest or their statement of interest, you know, I'm not happy with what's happening here.

So it's because they may not have been privy to that conversation internally within that constituency or that stakeholder group they may be lacking that information and then they may bring forward the idea that hey this person is not declaring themselves what's going on.

So I'm saying it's just a perception that we've got to avoid. The issues of, you know, false perception.

((Crosstalk))

Ray Fassett: There's always going to be that. There's always going to be - I'm not trying to be argumentative but there's always got to be false perception. How you actually combat that is through education. So the answer to that would be I represent the interest of my group; I am acting in the interest of my group; end of story. There's no conflict here.

((Crosstalk))

Ron Andruff: I'm not going to push back...

((Crosstalk))

Ray Fassett: ...too off tangent. So is there any other comments...

Avri Doria: This is Avri.

Ray Fassett: Yeah, Avri, go ahead.

Avri Doria: Yeah, this is Avri on that one. I guess it's - there's purpose of it and then there's the visibility and being able to the degree someone really is objective. You can say that I am here just representing my stakeholder group and the fact that my employer, you know, won't fire me for taking this vote it's clear.

But when you do a clear personal involvement in something I believe you could end up with something that at least has the appearance of conflict of interest and such.

So I'm not sure it's possible to unequivocally say that because you're doing what the stakeholder group tells you to do you therefore do not have a possibility of conflict of interest.

Ray Fassett: Yeah, I mean there's always the possibility. I mean, I think about elected representatives how could it not be possible that at some point but they're representing their constituents, the people that voted them in.

Ron Andruff: Well I think Ray if I might just jump on in this, I mean, we did a lot of work on the statement of interest and declaration of interest documentation.

Ray Fassett: Correct.

Ron Andruff: I think so, you know, if we step back from this kind of - the minutiae that we're getting into and this debate and look at kind of the holistic approach that we've taken, I think that, you know, what we've asked of the chair will ask before any vote is taken or any meeting begins or discussion, you know, are there any changes in the statements of interest or declarations of interest.

At that point I someone were to have a conflict and be concerned that it might be, you know, appear not to be in good order they can make a statement to clarify it. The point being is that I think we've got safeguards in place. It really comes to the bigger issue of when, you know, coming back to that abstention issue, what is an abstention and how does it count as a vote or note a vote. You know, that's more the critical issue here.

I think the issue of getting around our declarations of interest and statements of interest I don't think anybody is going to try to avoid those. So I think we

might, you know, be talking about something that's not so critical at this stage as opposed to the abstention issue.

Avri Doria: This is Avri, can I add something? I think you might be right. I think that even the ones that I was thinking of that I feel there might be an appearance of conflict here does become voluntary. And as such is not an imposed. So I think you're right, bringing it up to the top level it remains a voluntary abstention because it'll look like you're doing the wrong thing.

Ron Andruff: Exactly.

Ray Fassett: I agree. That's very well said by Ron and Avri. So where's - where are we at? Can somebody summarize where we're at?

Ron Andruff: Well I would ask the question and maybe Ken might be able to do it but the question that comes back to so where do we stand with regard to that individual voting or not voting vis-à-vis the abstention and how can we get around this?

If I understood at the top of the conversation, Ken, you said something - and I may have misunderstood it that you had trouble finding others that decreased the denominator or kept the denominator. I wasn't quite sure what you said there.

Ken Bour: Yeah, in cases where there is - to use the same language, this involuntary or material conflict of interest - an involuntary abstention where to use the representative example, I'm representing, you know, my community and I am on the - a board of councilors - I mean of board of supervisors right?

And it turns out that we're going to approve a contract for a big real estate development and my brother owns the company, right. So I have a material conflict of interest in voting for that contract when my brother is - owns the company who's bidding on that job.

So now it's going to be hard for me to come up with an example like that for the GNSO council but in the case of an involuntary abstention where there is a material conflict of interest every organization I looked at changes the denominator. The vote comes out, the denominator changes and if it takes a majority of X it now takes a majority of, you know, of X-1 to make that happen.

Ray Fassett: Yeah, so where I'm at on this is I need to understand what - what would be considered as an involuntary abstention at the council level.

Wolf-Ulrich Knoben: Yeah.

Ray Fassett: I'm not clear of what one would be.

Ken Bour: This is Ken again. I don't have a really good example for you because Rob and I talked about this for a while and we couldn't come up with anything either. But one way to deal with is because the intellectual property folks that I talk to and I mentioned their names earlier, Kristina and Steve, they felt very, very sure that there would be situations where there would be material conflicts of interest and they would have to recuse themselves.

Ray Fassett: That's what we need to find out.

Ken Bour: Okay.

Ray Fassett: We need that information and we need to understand why does that conflict exist at the council level and not at the stakeholder group level.

Wolf-Ulrich Knoben: Yeah.

Ray Fassett: What is the difference there? I understand they've got them in their head; we need to understand are they, you know, are they looking - have they segregated this correctly?

They may not have thought about this question, they may not have looked at it the way we're looking at it which is where is this conflict, is it at your stakeholder group level or at the council level, give me examples so we can understand.

((Crosstalk))

Ray Fassett: How can we go about that. Okay who's that Wolf?

Wolf-Ulrich Knoben: Yes.

Ray Fassett: Yeah go ahead Wolf.

Wolf-Ulrich Knoben: So I understand from all the discussion that we may agree to (unintelligible). So to - that we could accept the cases where material conflict of interests arise. So if that is the case okay then we could accept okay let's go for abstention and let's decrease the denominator in that so that's what I understood from the discussion and I would agree to that as well.

So what we cannot find as you formulated was, you know, we cannot find good examples right now. But I think we don't expect too many, you know, not a big variety of examples which could come up to the council for such cases.

So why shouldn't we suggest that (unintelligible) the frame of what we are looking at which means we accept the conflict of interest which (unintelligible) and let's start on council level and let's see what happens.

So in case somebody comes to - with a question for abstention, then he has to - he has to describe what is the material behind that. And then later on it could be taken on a list - to a list which is added to - which is added and which may be amended from time to time and it's added to the (unintelligible) procedure.

It shouldn't be fixed because we cannot find right now all potential cases but we don't expect too many.

Ken Bour: This is Ken. Wolf, yeah, I like what you're just saying. And if you guys have a chance to read this paper I put together I actually had written draft language that might end up in the council operating procedures. I didn't place it in what section but just to give you an example Section 5 deals with the procedures when a material conflict of interest is raised.

Let me just real quickly summarize that because there's a - Steve Metalitz actually read this document thoroughly and sought me out in Seoul and said Ken I've got some problems with your dissertation on this subject. And I've already recounted what a couple of those are but there's one more and I haven't dealt with it.

Let me just take a minute if I may and I'll do this briefly...

Ray Fassett: Quick, quick interruption - quick interruption...

Ken Bour: Yeah, yeah, yeah.

Ray Fassett: Is it possible for Julie just to send that document around so we're actually following you? Julie do you have that document or Ken could you send it to the list?

Julie Hedlund: Yeah, I have - this is Julie - I have the document. I hadn't sent it because I was waiting for Ray to say it was okay to send. I'll go ahead and...

Ray Fassett: Oh yeah it's okay to send. By the way this is a public comment. This is in the public comment forum.

Ken Bour: Yeah.

Ray Fassett: Sorry to interrupt but if you could send that around that would be helpful. Thank you.

Julie Hedlund: I'll do it right now. Thank you. This is Julie.

Ken Bour: Yeah, while that's taking place I'll just go ahead because I think - these points - they're not too numerous and I don't think it'll burden you to just sort of hear what I'm saying.

So it starts out a councilor who believes that his or her action participating/voting involving a measure before the council would result in a material conflict is required to follow these procedures.

And I just laid out a - five or six steps here. First document the circumstances that could give rise to the material conflict of interest and provide that statement to the GNSO Secretariat.

Second step, seek all reasonable means to eliminate the conflict. And I only give two examples; if representation a stakeholder group or constituency appeal to that organization's leadership to survey its members and direct how the vote on the conflicting issue shall be entered.

Now it would be important - we talked before about perceptive - perceptions of conflict, right? Even if there isn't a real conflict or if there's a perceived one, it sometimes might be helpful for transparency reasons to get the statement from the constituency that says I know that it looks like this person is conflicted and everybody on the council knows it and everybody also looking

around knows it but we're directing the vote and here's a statement that says that, right? So that would be purpose behind it.

Second if the person happened to be an NCA who was conflicted request permission of the council to allow the nonvoting NCA to vote on the matter in place of the conflicted councilor. It's just an idea.

The next step, if the conflict cannot be avoided after pursuing reasonable means available then the councilor may request permission to refrain from voting by entering an abstention which shall not affect any quorum calculations however it would reduce the numerator and denominator in the voting tabulations for the affected house.

Now here's the next key point that is - might be troublesome. I added this, because the potential effect of changing the denominator could have on whether actions pass or fail each abstention for material reasons must be approved by a majority vote of the opposite house in order to be entered by the requesting councilor.

Now again Steve Metalitz did not like that idea very much meaning if I step forward and say I have a material conflict of interest and I must abstain and that should change the denominator. He did not think it was a good idea that that question should be posed to the other house and that they would have the opportunity to make the determination.

The reason I liked it is because since gaming can be done when you start moving the denominators around it gives the other house the opportunity to look at the material conflict of interest and say - render a judgment which says you know what, after looking at it we don't think there really is a material conflict here and the councilor should not recuse him or herself from this vote.

Now the work team - you might want to tweak that; you could either like eliminate it or you could keep it or you might say maybe it takes a majority vote of both houses in order to approve the conflict or something like that.

Then the last step in this set of procedures was if an abstention is approved by the other house that councilor shall not participate in discussions or otherwise attempt to influence other council members nor shall he or she vote on any action attendant to the matter for which the conflict is present. And that's it, that's that section.

((Crosstalk))

Ron Andruff: I think - this is Ron speaking if I may Chair, I think that you've said it a couple times, we need Steve or, you know, or someone from that IP constituency to come back to us and tell us what are those material issues because we're operating in a vacuum right now.

Ray Fassett: Yeah, why don't we invite them to a call? That'd be great if Steve or Kristina were on this call right?

Ron Andruff: Absolutely.

((Crosstalk))

Ron Andruff: ...call or give us some clarification on it because if we could do that next week that would be helpful.

Ray Fassett: All right...

Avri Doria: This is Avri.

Ray Fassett: Yes.

Avri Doria: I'd like to make one comment. I actually think what was recommended there was really quite good including the - having the other house vote on it. The one issue I had was that the prohibition against or the absolute requirements for recusal comes a little late at that point.

And it seems to me that it should be required that someone that's going to be in this - (unintelligible) much way earlier, I mean, they know early if this thing comes to a vote they will have a material so that they should have had to declare their recusal, you know, weeks before it hits a vote.

And so if somehow - but I like the fact that the notion that it might happen, that there is a required conflict of interest that does require an abstention and that there is a allow or a practice that allows that to be dealt with but that it's murderously difficult to get and you've got to pay a price for it. So I actually - it was a good suggestion.

Ken Bour: Thank you.

Ron Andruff: Yeah, so just to clarify my comment. This is Ron. I wasn't saying it was a poor one; I agree with what you've just said Avri. I'm just saying that we continue bouncing up against this hypothetical thing that's not defined and until we get there we will always have that lack of - it will always leave a black hole here for us to try to figure out.

Ray Fassett: Well okay so next steps should we - we're actually on a biweekly schedule now as a work team; do we want to set up a special meeting next week to see - invite Steve and Kristina to the call?

Ron Andruff: I would support that if possible, Chair, because the following week I'm going to actually be on the move on the Wednesday the 25th I'll be in transit.

Ray Fassett: Okay. Do we pretty much agree as a work team that in the case of a material conflict of interest altering the denominator is appropriate?

Wolf-Ulrich Knoben: Yeah.

Ron Andruff: Yeah.

Ray Fassett: I think we do so...

Wolf-Ulrich Knoben: Yeah.

Ray Fassett: And that is a little bit of a change from our initial position where we did not to alter the denominator so we are now, you know, coming around to that point where we think it is. It could be a - it could be appropriate. And really what we're trying to understand now is what is a material conflict of interest and is it - is it at the council level or can it be resolved at the stakeholder group level.

And then Ken's idea of, you know, should we - it's not really our call, I mean, each stakeholder - well I don't know. Here's some clarification, Rob - Rob, you're on the call, you know, if a stakeholder group decides on their own that they want to allow one of their reps to pass their vote onto another rep due to a conflict of interest can they do that now?

If they on their own, in their own charter, or is that disallowed in the bylaws? I believe it's disallowed isn't it?

Rob Hoggarth: I don't think it's specifically permitted. That's a weaselly way to answer. This is Rob.

Ray Fassett: Yeah I hear you.

Rob Hoggarth: But I think Avri makes a very good point which is procedurally you'd like to be able to capture this far before you ever get to vote and so that maybe something that the work team to consider. So how do you identify these as

early as possible so that they can be resolved before you're, you know, in quorum and then counting votes?

Ray Fassett: Okay.

Ken Bour: This is Ken. I'm sorry. The reason I introduced that notion of proxy is I believe that - I read either heard or read or inferred something like maybe Rob saying that proxy voting is not permitted.

And I don't have a source to quote but I know in discussing this with (Liz) at one point I think she was pretty sure that if proxy voting was going to be introduced in the council at all it would have to entered into the GNSO council procedures.

Avri Doria: Yes. A bit of history, there used to be proxy voting but the legal counsel said that's a no-no without something specific in the bylaws and nobody ever succeeded in writing anything that they were willing to approve of so proxy voting which had been a practice several years ago was done away with at the instructions of legal counsel.

Ken Bour: Right, so in this case, you know, in that Section 5 that I was reading from if we ended up sort of liking the general tone of that we could add another bullet which said there is yet a third way to remove a conflict of interest, and that would be to allow proxy voting in a limited and very constrained case which is what we're talking about.

And in that situation either the NCA from the house or another councilor from that stakeholder group, something like that, would be permitted to enter a vote in the case of a material conflict of interest that was approved right.

So Ray we get to the point - and I like the way Avri said this - it becomes murderously difficult to change the denominator. I mean it's like, you know,

there are so many ways to avoid the conflict that it seems almost impossible that you'd ever end up changing the denominator.

Ray Fassett: Yeah and then those - on those rare, rare, rare exceptions where it is necessary it's the right thing to do. You know, so there's two sides to that as well.

Ken Bour: Right.

Ray Fassett: It's not that we just don't want the denominator ever to be changed it's also the fact that okay if all the requirements are met well it is the right thing to do.

So in Number 5 - so we're looking at Section 5 here right and you just mentioned adding a bullet point. Right Ken?

Ken Bour: I did and it would go in the second bullet; seek all reasonable means to eliminate the conflict.

Ray Fassett: I see it, I see it. It would go down there.

Ken Bour: Yeah.

Ray Fassett: So three down there.

Ken Bour: Yeah.

Ray Fassett: Okay well I'm - here's my suggestion, copy Section 5 out, send it to - well first of all we're going to invite Steve and Kristina to a call next Wednesday. I have to check my schedule see if I can do that. I will. Anyway a call next Wednesday, cut and paste this out, this is the topic of discussion, can they please join the call to provide their perspective. But I need that third bullet point put in there.

Ron Andruff: And if they can't join the call for some reason then perhaps they could just send us something in writing that we can all chew on before we get on the call.

Ray Fassett: Yeah, yeah, that would be good. I really would like a discussion on this though.

Ron Andruff: Understood, understood.

Ray Fassett: Yeah, I know you do too.

Ron Andruff: If there's conflicts, you know...

Ray Fassett: Yeah, yeah. So is that a good course of action? Julie, can you add that third bullet point in?

Julie Hedlund: I'm sorry...

Ken Bour: This is Ken. Why don't I add it and I'll shoot...

Julie Hedlund: Yeah.

Ken Bour: ...that to Julie.

Julie Hedlund: Let's do that. But to be clear Ray, I would suggest that you and Steve and Kristina...

Ray Fassett: Kristina, yeah, Rosette, yeah.

Julie Hedlund: ...that, Ray, that you would send the invite.

Ray Fassett: Oh yeah, yeah, yeah.

Julie Hedlund: Oh okay.

Ray Fassett: Yeah, I'm going to reach out to them.

Julie Hedlund: Great.

Ray Fassett: I'll call Steve.

((Crosstalk))

Ray Fassett: And I'll reach out to him the best I can. Yeah.

Julie Hedlund: So it's not from staff, right.

Ray Fassett: Right, right.

Julie Hedlund: Good, okay. And Ken you're going to take that bullet point and send that over to Ray right?

Ken Bour: Yep, I'm fashioning it now.

Julie Hedlund: Thank you.

Ray Fassett: All right anybody have any further comments on this? All right pretty good discussion I think. Plan of action so we're doing pretty good. Okay...

Rob Hoggarth: Hey Ray?

Ray Fassett: Yeah.

Rob Hoggarth: I'm sorry, this is Rob...

Ray Fassett: Yeah.

Rob Hoggarth: ...with one other question and that is if I recall correctly the resolution the council passed in Seoul set a timeframe of 25 November...

Ray Fassett: Yes.

Rob Hoggarth: ...for the work team to provide some further feedback. Just a quick temperature check right now whether you think you're going to need that based on this discussion or whether you want to start sending signals that you need additional time?

Ray Fassett: We're going to need additional time. We're definitely going to need additional time. Two reasons, one, we need to gather this input; two there is a holiday in the US coming up at the end of the month that's going to cause a distraction so I would like to request, you know, another couple weeks for our work team.

((Crosstalk))

Ray Fassett: Anybody disagree?

Avri Doria: No, I think you're right. This is Avri. I just wanted to let you know I won't make the meeting next week.

Ray Fassett: Okay. Are there days - is there another day next week? We don't have to do Wednesday.

Avri Doria: No I'm running the ITF meeting that week and so there's probably no day that week other than Friday when I'm back home that I'd be able to participate in something.

Ray Fassett: All right well okay well let me just get the invite out there and maybe we do this the following week even if we have a call on Monday and then another one on Wednesday.

Avri Doria: Yeah, my not being there doesn't matter I can listen to the recording, you know, so I was just letting you know that it wouldn't make it I don't think that that's a reason for you not to hold it or to change the schedule.

Ray Fassett: Understood, understood. Ron are you not available next week the following week Ron?

Ron Andruff: The week of the - the week of the 23rd through the 27th I'm going to be attending a conference and traveling to and from that conference unfortunately so but again I'm just one voice and as Avri said I can pick up the transcripts and I can participate in that way.

In any case if we get those folks on the phone that's one thing, if we get - but if it's in written form, you know, that's also easier for us to deal with. But I think let's go forward with the way you're suggesting, Chair, and see how it falls. And then, you know, whichever way it works is fine.

Ray Fassett: Okay I'll follow up with what, you know, obviously we've got to meet their - accommodate their schedules as well so...

Ron Andruff: Right.

Ray Fassett: ...they might have suggestions and I'll just forward back what I can.

Wolf-Ulrich Knoben: Okay Ray. Wolf speaking so I'm sorry I have to leave right now so (unintelligible) for next week or you're just (unintelligible).

Ray Fassett: Okay I'm getting a little bit of break up on the conference call. Was your question are we going to have the call next week?

Wolf-Ulrich Knoben: Yes.

Ray Fassett: I'm going to plan on it, yeah. What I'm going to do I'm going to contact right now Steve and Kristina unless people have other suggestions as well. I'm going to ask for next Wednesday at 1700 UTC and also offer if they have other times that meet their schedules to let us know as well. See what we can do.

Wolf-Ulrich Knoben: Sorry, I have to leave so I'm very sorry.

Ray Fassett: Yeah, no that's okay.

Wolf-Ulrich Knoben: Okay well then good bye.

Ray Fassett: Bye.

Ron Andruff: Bye.

Ray Fassett: Okay any other comments or anything? Any other business?

Gisella Gruber-White: Ray, it's Gisella.

Ray Fassett: Gisella, yes. Yes, Gisella.

Gisella Gruber-White: Quick question, I'll hold a slot for you next week at 1700 UTC no problem. Should we go ahead with the call next week...

Ray Fassett: Yeah.

Gisella Gruber-White: Would you then resume to biweekly having a call the following week and then on the 2nd of December or actually two weeks from the 18th?

Ray Fassett: I think we'll call next week a special meeting and keep the biweekly on the schedule we're on now.

Gisella Gruber-White: On the 2nd then.

Ray Fassett: Yeah.

Gisella Gruber-White: No problem.

Ray Fassett: Yeah.

Gisella Gruber-White: It's just if I have it up on the GNSO calendar then it gives people a little bit of time to plan.

Ray Fassett: And I'm thinking now in my head too the way I'm going to approach Steve and Kristina is look we're reaching out to you as a work team, we're going to hold a special meeting next Wednesday. We're looking for you to attend, this is the time rather than keeping it open ended.

Gisella Gruber-White: Okay.

Ray Fassett: Okay so now I'm just thinking in my head that might be a better strategy.

Ron Andruff: Sounds good.

Ray Fassett: Okay. All right I don't have any other business and if there are no objections I think we can adjourn the call and stop the recording.

Gisella Gruber-White: Perfect.

Avri Doria: Thank you. Good night.

Ray Fassett: Okay thank you. Thank you Ken too.

Ken Bour: Thanks everyone.

((Crosstalk))

Rob Hoggarth: Bye, bye.

Gisella Gruber-White: Thank you, bye, bye. Thank you (Louise).

Coordinator: Hi Gisella. Thanks very much.

Crosstalk

Gisella Gruber-White: Thank you. Have a lovely evening. Speak to you soon.

Coordinator: You too, you take care. Bye.

Gisella Gruber-White: Okay bye.

END