Minutes of the GNSO Council Meeting 19 November 2020

Agenda and Documents

Coordinated Universal Time: 21:00 UTC: https://tinyurl.com/y6g9gnt5

13:00 Los Angeles; 16:00 Washington; 21:00 London; (Friday) 00:00 Moscow; (Friday) 06:00 Tokyo; (Friday) 08:00 Melbourne

List of attendees:

Nominating Committee Appointee (NCA): Non-Voting – Olga Cavalli

Contracted Parties House

Registrar Stakeholder Group: Pam Little, Kristian Ørmen, Greg DiBiase

gTLD Registries Stakeholder Group: Maxim Alzoba, Kurt Pritz, Sebastien Ducos

Nominating Committee Appointee (NCA): Tom Dale

Non-Contracted Parties House

Commercial Stakeholder Group (CSG): Marie Pattullo, Mark Datysgeld, Philippe Fouquart, Osvaldo Novoa, John McElwaine, Flip Petillion

Non-Commercial Stakeholder Group (NCSG): Juan Manuel Rojas, Stephanie Perrin, Tatiana Tropina, Wisdom Donkor, Farell Folly, Tomslin Samme-Nlar

Nominating Committee Appointee (NCA): Carlton Samuels

GNSO Council Liaisons/Observers :

Cheryl Langdon-Orr– ALAC Liaison

Jeffrey Neuman– GNSO liaison to the GAC

Maarten Simon – ccNSO observer

ICANN Staff

David Olive -Senior Vice President, Policy Development Support and Managing Manager, ICANN Regional

Mary Wong – Vice President, Strategic Community Operations, Planning and Engagement

Julie Hedlund – Policy Director

Steve Chan – Senior Director

Berry Cobb – Policy Consultant

Emily Barabas – Policy Manager

Ariel Liang – Policy Senior Specialist

Caitlin Tubergen – Policy Director

Terri Agnew - Operations Support, Lead Administrator

Nathalie Peregrine – Manager, Operations GNSO

Zoom Recording

Transcript

Item 1: Administrative Matters

1.1 - Roll Call

Philippe Fouquart, GNSO Chair, welcomed all to the GNSO Council meeting.

1.2 - Updates to Statements of Interest.

1.3 - Review / Amend Agenda

The agenda was approved as presented.

1.4 - Note the status of minutes for the previous Council meetings per the GNSO Operating Procedures:

Minutes of the GNSO Council meeting on the 24 September 2020 were posted on 9 October 2020.

Minutes of the GNSO Council meetings part 1 and part 2 on the 21 October 2020 were posted on 6 November 2020.

Item 2: Opening Remarks / Review of Projects & Action List

2.1 - The review of the Projects List and Action Item List

Berry Cobb, GNSO Policy Consultant, provided the latest updates to the Action Decision Radar (ADR) , the Action items and the Project List to Council:

- Expressions of Interest for EPDP P2 A Chair will close on 23 November 2020.
- RPM WG will submit its Final Report by end of November 2020.
- IGO Protections is in stage 6 at a Board vote. The Board did resolve that the recommendations sent to them by the GNSO Council will be put on hold pending activity by the soon to start IGO Work track. A call for volunteers and for Chair for this group has also been circulated.
- IRP IOT is not of Council's purview but as it relates to onboarding the Standing Panel to IRPs, it was to be on Council's radar. It will be removed next month.
- The Standing Committee on ICANN Budget and Operations (SCBO) kicked off its first meeting to review the draft PTI and IANA FY22 budgets and operating plan. The group will be completing its first draft and making it available for Council next week, as the Public Comment ends on the 30 November.
- Standing Selection Committee (SSC) is reconfirming its membership coming out of this particular cycle.
- The Action Item page has been updated and will be tracked on a Google sheet, which will be published to the same wiki page as before. A tracking method has been added, with clearer

assignments now possible. Reporting metrics will also be available to track activity. The items will also be in keeping with Council program management codes.

Maxim Alzoba, Registry Stakeholder Group, RySG, asked about the program management tool, cell 166, and why 540 days were projected for task completion of the SubPro implementation phase. **Berry Cobb** reminded councilors about how duration was estimated, with an anticipation of the maximum effort needed for the item to be completed. The duration also has to take into account additional steps needed once the effort leaves the Council's remit, whilst relying on the best information available every month for the updates to the document.

Kurt Pritz, RySG, noted that whilst reporting is key, not all items had the same relevance to Council. Several items would benefit from being even further detailed, PDPs for example. **Berry Cobb** responded that the program management tool is not based on priority, the intent being to identify everything which touches the GNSO from PDPs to ATRT4, for example with varying levels of involvement for the Council.

Action items: none

Item 3: Consent Agenda

There were two items on the Consent Agenda.

- 3.1 - Action Decision Radar - After discussing on the October 2020 meeting, Council to approve delay for the request for the Policy Status Report (PSR) for the Expired Domain Deletion Policy and the Expired Registration Recovery Policy . For clarity, delay should be considered to mean that while the Council recognizes the importance of the PSR for these consensus policies, they do not need to be at the top of the queue.
- 3.2 - Motion for the confirmation of GNSO representative to the Empowered Community Administration

Councilors voted unanimously in support of the motion.

Vote results

Action Items:

- GNSO Support staff to send GDS a formal communication regarding the approved delay for the request for the Policy Status Report (PSR) for the Expired Domain Deletion Policy and the Expired Registration Recovery Policy. For clarity, delay should be considered to mean that while the Council recognizes the importance of the PSR for these consensus policies, they do not need to be at the top of the queue.

- GNSO Secretariat to communicate the following decision to the ICANN Secretary: Philippe Fouquart will represent the GNSO as the Decisional Participant on the Empowered Community Administration until the end of his term at ICANN72.

Item 4: COUNCIL DISCUSSION - Item 4: COUNCIL DISCUSSION - GNSO Council Strategic Planning Session (SPS)

Philippe Fouquart, GNSO Chair, summarized the SPS sessions to date: a plenary session, a brainstorming session with Stakeholder Group (SG) and Constituency (C) Chairs, two breakout sessions on separate topics. He thanked all councilors for their participation and the SG C Chairs for their willingness to provide their input to the new Council. The SPS wrap-up session is scheduled for next week. The aim is to help councilors to prioritise their work for the coming year. **Pam Little, GNSO Council Vice Chair, RrSG,** echo-ed Philippe and thanked all for their attendance despite the time zone difficulties in scheduling virtual sessions rather than the usual face-to-face.

Maxim Alzoba, RySG, agreed that the SPS was an extremely good idea and an event to be continued annually.

Action Item: none

Item 5: COUNCIL DISCUSSION - Update on Ongoing GNSO Policy Development Processes

John McElwaine, **GNSO Council Liaison to the RPM WG**, reminded all that the WG was chartered over four years ago and that a huge debt of gratitude is owed to the members and the co-chairs, as well as Julie Hedlund, Mary Wong and Ariel Liang, GNSO Staff support. The group will be delivering the Final Report to the Council on 25 November 2020. There will be 35 recommendations of those 34 received full consensus, 1 received consensus with an accompanying minority statement. 15 recommendations concerned the URS, 4 on the Trademark Clearinghouse, 8 recommendations on trademark policy, 6 recommendations on trademark notices, 1 for over arching data collection.
Flip Petillion, **GNSO Council Liaison to the SubPro WG,** reminded Council that the WG submitted a Project Change Request, committing to deliver the Final report to Council no later than the end of 2020. Over the last few months, an important amount of work has been carried out by co-chairs and GNSO Staff support. The WG will deliver on time, after having met twice a week, in addition to leadership meetings. Membership has been motivated and engaged in this final effort. The co-chairs will soon distribute red-lined draft texts for members to share their final comments on the final report. There are several points still in discussion, one in particular would concern the Council. There are outstanding issues regarding IDN variants, some members want these issues solved before the next round of new gTLDs, some believe this is out of the WG's scope. Council will need to address these issues.

Jeffrey Neuman, **GNSO Liaison to the GAC, but in his capacity as SubPro co-chair**, added that the topic of IDNs is important and has been looked at by the WG extensively. The GNSO Council IDN Scoping team recommended an EPDP to further look at this topic.Therefore in the case the Council might launch a PDP, the question of interrelation ought to be looked at now, and an emphasis on the IDN scoping work might be beneficial. ICANN Org and Board have also mentioned that this would need to be resolved prior to launching the next round.
Maxim Alzoba, RySG, stated that the IDN variants topic within the WG did not have full consensus and therefore might not make it into the Final Report. The items should be kept separate, and any further discussion on the topic could further delay the next round. **Philippe Fouquart, GNSO Chair,** added that this dependency was indeed in question at a community level.

Pam Little, GNSO Council Vice Chair, RrSG, mentioned that, regardless of the question of dependency, the question of IDN variants is important, and is of Council's remit to develop policy to address the topic. The question of dependency is yet to be determined. But the topic would need to be discussed with the IDN Scoping team to better understand the time needed once the charter is drafted. It could be possible that by the time the implementation of SubPro recommendations is finished, the IDN EPDP could quite possibly have completed their work. She agreed with the concerns expressed by ICANN Org and the Board as promoting diversity is one of the key goals in the 2012 round and the next and future rounds.

Philippe Fouquart, GNSO Chair, agreed that the IDN scoping effort should be pushed to the top of the list.

Jeffrey Neuman, GNSO Liaison to the GAC, but in his capacity as SubPro co-chair, clarified that the WG did not believe there is a dependency, the WG will push forward to finish their work. The co-chairs only wanted to highlight the fact ICANN Org and Board had raised the possibility of a dependency.

Kurt Pritz, RySG, added that there are legal and security issues linked to the question of IDN variants. Even if the EPDP were to be launched earlier, it would not necessarily be a guarantee of success.

Philippe Fouquart, GNSO Chair, thanked the Council Liaisons for their updates.

Action Item: none

Item 6: COUNCIL DISCUSSION - When to Launch the Review of Policy & Implementation Recommendations Review

Philippe Fouquart, GNSO Chair, reminded the Council that 5 years ago this non-PDP WG provided a report on Policy and Implementation with recommendations on : a guidance process, an input process, Consensus Policy Implementation Framework (CPIF), IRT principles and guidelines. June 2020 was the date for the input to be reviewed.

Pam Little, GNSO Council Vice Chair, RrSG, added that leadership had discussed this, and has suggested that the small team tasked with reviewing the Operational Design Phase (ODP) paper, also take a look and the Policy and Implementation Report to suggest to Council whether to take a closer look at the outputs, or postpone it to later. Several of the processes have not been used yet in the past 5 years, except the EPDP.

Maxim Alzoba, RySG, suggested discussing item 6 and 7 of the Council agenda together. The GNSO Review has to wait for ATRT3 results to be implemented. The approval of the Policy & Implementation Recommendations review (with several processes never having been used) needs to be done in the correct order.

Pam Little, GNSO Council Vice Chair, RrSG, agreed with Maxim but added that timing is not the only factor. She also mentioned that the CPIF and IRT Principles and Guidelines have been used, and raised by the small Council team working on recommendation 7 from EPDP 1. Certain concepts need to be focused on within the outputs, but also other reviews have overlaps.

Kurt Pritz, **RySG**, leading the Council small team on ODP, asked Council who would be willing to take an additional task to review the Policy and Implementation recommendations.

Tatiana Tropina, GNSO Council Vice Chair, Non Commercial Stakeholder Group (NCSG), agreed with Kurt and noted that a full review does not need to be launched but that it can be discussed within the overarching exchanges within the ODP small team.

Pam Little, GNSO Council Vice Chair, RrSG, informed councilors that one of the deliverables of the ODP small team could be to explain why it would not be timely to launch the review right now. **Greg DiBiase** agreed with Pam and Maxim, that there are other dependencies to the GNSO review, and that the ODP Small team expertise could be increased by additional council members.

Jeff Neuman, GNSO Liaison to the GAC, reminded councilors that the PDP2.0 asked for a Standing Committee for Improvement Implementation to be created to look at issues as they arose. He suggested re-building a similar committee rather than passing off items to the GNSO Council ODP small team.

Action Item: none

Item 7: COUNCIL DISCUSSION - Upcoming GNSO 3 Review

Philippe Fouquart, GNSO Chair, informed councilors that this item was triggered by a letter sent by ICANN Board asking whether the review will take place in June 2021 in light of the dependency on ATRT3.

Tatiana Tropina, GNSO Council Vice Chair, NCSG, asked councilors for their input concerning the response as time was running out to start the GNSO3 review on time.

Osvaldo Novoa, Internet Service Providers and Internet Connectivity Providers Constituency (ISPCP), suggested that given ATRT3 as well as the NomCom reviews suggested a holistic review of ICANN. These could also be considered dependencies, and the GNSO Council could also request such a review as ICANN Org has changed a lot in five years.

Stephanie Perrin, NCSG, raised that, whatever form it takes, the consultation should be posted in a consistent manner.

Maxim Alzoba, RySG, Tatina Tropina, GNSO Council Vice Chair, NCSG, and **Marie Pattullo, Commercial Business Users Constituency (BC),** agreed with waiting for the ATRT3 review prior to beginning the GNSO3 review. Marie added that a lot of work will be triggered by the ATRT3 review.

Pam Little, GNSO Council Vice Chair, RrSG, raised that consultation would need to be taken by the GNSO as a whole, as GNSO Council is only one part of the GNSO but, procedurally, the Council could form a view or arrive at a position for the Council chair or leadership to take to the broader GNSO-wide discussion . **Tatiana Tropina, GNSO Council Vice Chair, NCSG,** added that a consultation would need to be held with the SG/C as per recommendations in the Board letter.

Philippe Fouquart, GNSO Chair, reminded councillors that during the SPS Brainstorming session, the need for the strengthened dialogue with SG and C was raised, and that this should be put in place for discussion around GNSO3 review.

John McElwaine, **Intellectual Property Constituency (IPC)**, having looked at the Bylaws, noted that the notion of “feasibility” was raised as possible delaying factor, so Council would need to focus on this item in the response to the Board,

Action Items:

- GNSO Council leadership to discuss with leaders of the GNSO SGs and Cs regarding potentially delaying the upcoming GNSO3 Review until the ATRT3 recommendations are implemented.
- If such a view is agreed by SGs and Cs' leaders, GNSO Council to communicate this view to the ICANN Board in a timely manner; GNSO support staff to assist in conveying such a message.

Item 8: COUNCIL DISCUSSION - Continued Discussion on the Draft Motion to Affirm Intent of EPDP Phase 1 Recommendation 7 and initiation of the Thick WHOIS Transition Policy EPDP

Pam Little, GNSO Council Vice Chair, RrSG: Recommendation 7 from EPDP P1 Final Report, if implemented, will mean registries will decide if registrars send thick whois data to them, so making it optional. The existing policy is the Thick Whois Transition Policy where it is a mandatory for registrars to send thick whois to the registry operator. The enforcement of this policy was deferred pending EPDP outcome. There are now different views on how Rec 7 should be implemented, this is the impasse the Board has written to Council about. A Council small team was formed to work on the issue. The topic is

challenging, with different views within the small team. Pam encouraged councilors to look at the draft motion in its current form. It will be submitted to Council for the December meeting.

John McElwaine, IPC, concurred with Pam as to the reasons for the impasse. The small team is fine with interpreting that rec 7 was to overturn existing consensus policy, but the question is how to communicate that to the IRT with rational inclusive language. There are two policies, one which conflicts with the other. How do we resolve that conflict? Do we communicate that we implement rec 7 as written, and have an EPDP to look at Thick Whois which is no longer?

Pam Little, GNSO Council Vice Chair, RrSG, agreed with the need for a new template or an agreed rule to apply when a new consensus policy recommendation conflicts with an existing policy, for instance that the more recent consensus policy recommendation should prevail.

Maxim Alzoba, RySG, reminded councilors that the law prevails over ICANN policies, in this situation, the EPDP did not make Thick Whois become an out of date policy, it was GDPR.

Stephanie Perrin, NCSG, suggested that for the motion, there is new legal information, a subsequent precedent being set, therefore building the argument for a new EPDP to handle the issue.

Philippe Fouquart, GNSO Chair, asked whether incoming councilors would like to join the small team given it was created before the new council was seated. **Pam Little** agreed that all should be able to join provided they can come up to speed swiftly.

Olga Cavalli, NomCom Appointee, had volunteered to be the liaison for the EPDP P2A and would like to join the small team to be kept in the loop.

Sebastien Ducos, GNSO Council liaison to the EPDP IRT, asked what information he could bring back to the IRT prior to the vote taking place next month. **Philippe Fouquart, GNSO Chair,** suggested that early input could be shared informally prior to the December meeting.

Action Item:

- GNSO Support Staff to launch another call for volunteers for the small team related to expediting the Thick WHOIS review as envisaged by the EPDP Phase 1 recommendation 27, noting that there is limited work left for the small team before it concludes its work prior to the December 2020 Council meeting. GNSO Support Staff to note that Olga Cavalli has volunteered to join the small team.

Item 9: ANY OTHER BUSINESS

9.1 - Update from the small team reviewing the Operational Design Phase concept paper

Kurt Pritz, RySG, updated councilors on the methodology of the small team used to review the paper thoroughly, and devised questions which ICANN Org could use for clarity purposes. Most of the ODP small team was in alignment, and a draft response was sent to Council for input. This included specific topics on transparency considerations, recommendations for a framework over a procedure, suggestions

that when needed the ODP be available in a flexible and discretionary way at various moments, and possible risks. (slide deck)

Action item:

- Kurt Pritz to send the ODP presentation slides to the GNSO Council list asap; Councilors to provide comments by the SPS Wrap Up session on Tuesday, 24 November at 18:30 UTC.

9.2 - Next steps for the Expressions of Interest Process for the EPDP Phase 2A Chair

Pam Little, GNSO Council Vice Chair, RrSG, informed councilors that there has been no application yet despite an extension. If no one from the community were to come forward, hiring an external facilitator could be a solution, however negative the precedent set. This is an exceptional situation, as the two topics have been discussed at length, and in this scenario, a mediator could be helpful.

Maxim Alzoba, RySG, agreed with the possibility of an unbiased mediator and highlighted the importance of the fact the community is over-stretched.

9.3 - Proposed next steps for nomination of GNSO Fellowship Program Mentor and Selection Committee Member

Emily Barabas, ICANN Org, ICANN Org has requested SG and C recommend a Fellowship Program Mentor and Selection Committee member. Heather Forrest has held the latter for the last two years and has confirmed she is willing to carry the role forward. Regarding the Program Mentor, the SSC is available to work on the process.

Philippe Fouquart , GNSO Chair, *adjourned the meeting at 22:13 UTC on Thursday 19 November 2020*