

Minutes of the GNSO Extraordinary Council Meeting 04 May 2023

Agenda and Documents

GNSO Council meeting on Thursday, 04 May at 13:00 UTC: <https://tinyurl.com/49jde7w7>

06:00 Los Angeles; 09:00 Washington DC; 14:00 London; 15:00 Paris; 16:00 Moscow; 23:00 Melbourne

List of attendees:

Nominating Committee Appointee (NCA): – **Non-Voting** – Anne Aikman Scalese

Contracted Parties House

Registrar Stakeholder Group: Antonia Chu, Greg DiBiase, Theo Geurts

gTLD Registries Stakeholder Group: Nacho Amadoz, Kurt Pritz (absent), Sebastien Ducos

Nominating Committee Appointee (NCA): Desiree Zeljka Miloshevic Evan

Non-Contracted Parties House

Commercial Stakeholder Group (CSG): Marie Pattullo, Mark Datysgeld (apologies), Osvaldo Novoa, Thomas Rickert, John McElwaine, Susan Payne

Non-Commercial Stakeholder Group (NCSG): Stephanie Perrin, Bruna Martins dos Santos (absent), Manju, Wisdom Donkor, Tomslin Samme-Nlar, Farell Folly (absent), Manju Chen

Nominating Committee Appointee (NCA): Paul McGrady

GNSO Council Liaisons/Observers :

Justine Chew : ALAC Liaison

Jeff Neuman: GNSO liaison to the GAC

Maarten Simon: ccNSO observer (absent)

Guest: Avri Doria and Becky Burr – ICANN Board

ICANN Staff

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

Mary Wong – Vice President, Strategic Policy Management

Marika Konings – Vice President Policy Development Support

Julie Hedlund – Policy Development Support Director

Steve Chan – Senior Director, Policy Development Support & GNSO Relations

Berry Cobb – Senior Program Manager, Policy Development Support

Emily Barabas – Policy Development Support Senior Manager (GNSO)

Ariel Liang – Policy Development Support Senior Specialist (GNSO)

Caitlin Tubergen – Policy Development Support Director (GNSO)

Terri Agnew – Policy Operations Specialist (GNSO)

Devan Reed - Secretariat Operations Coordinator

[Zoom recording](#)

[Transcript](#)

Item 1. Administrative Matters

1.1 - Roll Call

1.2 - Statements of Interest (SOI).

1.3 - Review / Amend Agenda

The agenda was accepted 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 15 March 2023 were posted on 30 March 2023.

[Minutes](#) of the GNSO Council meeting on 20 April 2023 will be posted on 07 May 2023.

Action items:

- None

Item 2: COUNCIL DISCUSSION - Proposal of SubPro Small Team Triage Exercise

Sebastien Ducos, GNSO Chair, thanked the small team for their hard work on a tight schedule and thanked Avri and Becky for their participation in the small team and introduced SubPro Pending Recommendations Small Team lead, **Paul McGrady**.

Paul McGrady, Subpro Pending Recommendations Small Team Lead, explained that the initial purpose of the small team was to understand the Board's concerns and triage a path forward for the pending recommendations. He reviewed [GNSO Council deliverables](#) (slide 5) regarding proposed paths forward in preparation for the 22 May meeting with the ICANN board. Small team will consider board feedback after that meeting and if needed revise the document. Paul McGrady, SubPro Pending Recommendations Small Team lead gave the finalization of deliverables date as Day Zero at ICANN77 on 11 June 2023.

Anne Aikman-Scalese, NCA clarified that after today's meeting with GNSO Council, the small team's document may need to be updated after receiving input from Council.

Paul McGrady, SubPro Pending Recommendations Small Team Lead, explained the [SupPro Pending Recommendations document](#) chart headers. He noted that the deliberations column is recordkeeping of the small team's discussions and the proposed path forward column is core output. Paul McGrady also noted that the recommendations output that the board marked pending is a relatively small subset of recommendations. For each of the recommendations the small team needed to choose the preferred route to address it and they used a "bucket" classification system, detailed in the [presentation](#) slides 9 and 10.

Anne Aikman-Scalese, NCA, thanked Paul for his useful description and stated that the small team discussed some issues of Board concern that had already been deliberated by the SubPro Working Group. The small team intends to cite chapter and verse where those deliberations occurred.

Paul McGrady, SubPro Pending Recommendations Small Team Lead, stated that chapter and verse is especially important with Bucket A, additional clarification to the ICANN Board. There was no way to capture 5 years of deliberations in the PDP Final Report and the Board cannot be expected to review the entire record of deliberations.

Justine Chew, ALAC Liaison, asked what the council would need to do for supplemental recommendations in Bucket D (allowing Board non-approval of a recommendation) and how it differs from Bucket C (the Council may modify or amend approved recommendations) in terms of recommending something that would modify the recommendation.

Paul McGrady, SubPro Pending Recommendations Small Team Lead, explained that when the Board rejects a recommendation, Council has the opportunity to raise a solution. Some recommendations can be rejected and they may not change the nature of the New gTLD program.

Steve Chan, ICANN org, clarified that the Board does not reject recommendations, they just do not accept recommendations. GNSO Council receives an explanation of why the board is unable to accept the recommendation and consults with Council about non-approval. There is not a prescribed process of what happens next as to leave room for flexibility.

Paul McGrady, SubPro Pending Recommendations Small Team Lead, described the triage chart (slides 9 through 10), showing which recommendations were put in each “bucket.”

Anne Aikman-Scalese, NCA, stated the charts are helpful and raised that there are no references to Bucket C (the Council may modify or amend approved recommendations) or Bucket D (allowing Board non-approval of a recommendation).

Paul McGrady, SubPro Pending Recommendations Small Team Lead, shared that Buckets C (the Council may modify or amend approved recommendations) and D (allowing Board non-approval of a recommendation) were paths that were discussed with the small team and some items may be moved to different buckets or paths depending on the deliberations of the Board.

Anne Aikman-Scalese, NCA, saw the small team as a sorting exercise to decide if items require policy work or if they are implementation and the small team as a whole ended up more consistent on explaining why each recommendation should be adopted, suggesting that the Board's concern should not result in modifications that require further policy process.

Jeffrey Neuman, GNSO Liaison to the GAC, raised that the small team is talking about one change to the bylaws, not one change per each topic or recommendation and he suggested taking that entire bucket as one item.

Paul McGrady, SubPro Pending Recommendations Small Team Lead, stated that he does not want to preclude people from seeing items in a different way and work through them in their own lens.

Anne Aikman-Scalese, NCA, shared that she does not remember when the group agreed to recommend a bylaw process about Topic 30, GAC Consensus Advice and GAC Early Warning.

Paul McGrady, SubPro Pending Recommendations Small Team Lead, responded that the small team is recommending exploring a bylaw process is an option. Some of the bylaws provisions did not survive the transition and Council needs clarification about the bylaws basis on GAC Early Warnings and Advice.

Jeffrey Neuman, GNSO Liaison to the GAC, explained that is why Topic 30: GAC Consensus Advice and GAC Early Warning is in Bucket G (Other - Dialogue between the Council and the Board). All items in Bucket E (Explore starting a Bylaw Process) are referencing to what extent can the board enforce items in contracts that are outside of its mission.

Paul McGrady, SubPro Pending Recommendations Small Team Lead, thanked **Jeffrey Neuman, GNSO Liaison to the GAC**, for the clarification and stated that the appropriate bylaws frame must be in

place. There is an interaction between how the GAC does its job and how an applicant might want to resolve an issue.

Anne Aikman-Scalese, NCA, shared that she thinks Jeff is correct and that Susan is correct in chat, but does not think that Topic 30 belongs in Bucket E (Explore starting a Bylaw Process).

Paul McGrady, SubPro Pending Recommendations Small Team Lead, explained that the chart cannot capture all of the detail, it is just trying to summarize weeks worth of work. There is not enough time to go through the chart line-by-line, but if councilors have questions he is happy to answer them or address questions with the small team.

John McElwaine, GNSO Council Vice-chair, asked what are the options or answers that the small team anticipates receiving back from the Board?

Paul McGrady, SubPro Pending Recommendations Small Team Lead, anticipates that some issues will be resolved through discussion. The Board can act independently and some suspended recommendations may be moved to activate empty buckets or to other processes. The small team's deliberations were supplemented by Becky Burr, ICANN Board, and Avri Doria, ICANN Board, who gave insight into the Board's point of view.

Avri Doria, ICANN Board, thanked Council for including herself and Becky Burr, ICANN Board, in the small team and shared that sometimes the Board sees multiple interpretations and paths that need careful decision making and could be contrary to someone else's interpretation. Items being in writing guards against accountability measures.

Paul McGrady, SubPro Pending Recommendations Small Team Lead, compared the process to the United States congressional record of how recommendations come to be.

Stephanie Perrin, NCSG, would like to see less nebulosity on the issue of Board clarification on bylaw amendments. She hopes the small team is not planning to constrain the ability of the Board to manage GAC Advice in the way it sees fit at the time

Paul McGrady, SubPro Pending Recommendations Small Team Lead, clarified that the recommendations are not about constraining the GAC but about applicants resolving with GAC Advice related to their application.

John McElwaine, GNSO Council Vice-chair, shared the timelines and next steps up to ICANN77 Day 0 in Washington, DC on 11 June 2023. Starting on 04 May 2023, staff is compiling clarifying information through 10 May 2023. Staff will compile chapter and verse citations that are links to past Council statements, SubPro rationale, and other reference points. He recommends Councilors to be familiar with the SubPro topic by the 22 May 2023 ICANN Board and GNSO Council meeting.

Anne Aikman-Scalese, NCA, asked if the Board SubPro Caucus will have the ability to review materials before the 22 May 2023 meeting?

Avri Doria, ICANN Board, confirmed that the Board SubPro Caucus has been following the small team's deliberations closely and has a strong level of understanding of the issues discussed.

Steve Chan, ICANN org, confirmed that the staff is beginning work today, 04 May 2023, to provide materials as soon as possible.

Desiree Miloshevic, CPH NCA, commended the small team for doing a great job and asked if Council could expect to see an update of the current document after May 10 2023 and before the meeting with the

ICANN Board? She also asked if the small team document items can be notated with their specific buckets.

Paul McGrady, SubPro Pending Recommendations Small Team Lead, stated that there would be no substantive changes to the document prior to the 22 May 2023 meeting, but there may be changes after receiving Board feedback. He recommended using [slides 9 and 10](#) as a legend for the small team document and agreed that color coding the buckets in the document is a great idea. Paul McGrady reassured all that chapter and verse is not intended to recreate the entire SubPro record, but to go beyond the rationale in the final report to capture all points of view that were brought to the table.

Jeffrey Neuman, GNSO Liaison to the GAC, reiterated that not all of the details discussed during the PDP could make it into the final report, and that there will be no new documents created, just a collection of citations.

Paul McGrady, SubPro Pending Recommendations Small Team Lead, shared that he sees chapter and verse as one pager on each topic for the Board to digest, as a map to the issue and how it was discussed.

Anne Aikman-Scalese, NCA, asked Becky Burr, ICANN Board, to comment on the wide variety of opinions on how long it takes to change the bylaws.

Becky Burr, ICANN Board, explained that if the community is motivated a bylaws change can move relatively quickly and not impede the process. The worst possible outcome is to go for a bylaws change and not get it.

John McElwaine, GNSO Council Vice-chair, reminded all that there is a need to update the small team's assignment and review the small team's composition to ensure it is fit for purpose.

Paul McGrady, SubPro Pending Recommendations Small Team Lead, shared that he thinks the small team has functioned well, has good participation, and that the small team should be kept intact. Any councilors are welcome to join, but he does not want to get bogged down reformatting the team.

Anne Aikman-Scalese, NCA, asked that Council settle any remaining confusion about the [23 March 2023 GAC letter](#).

Jeffrey Neuman, GNSO Liaison to the GAC, shared that the intention behind the 23 March 2023 GAC Letter was to open a dialogue between the GAC and the GNSO to talk through the issues and make sure there are no misunderstandings.

Paul McGrady, SubPro Pending Recommendations Small Team Lead, thanked Jeff for the useful information and stated that there are a lot of tasks for the small team to accomplish before ICANN77, and that he hopes Council leadership and **Jeffrey Neuman, GNSO Liaison to the GAC** can work out how best to liaise with the GAC.

Anne Aikman-Scalese, NCA, raised that further meetings of the small team need to be scheduled, and stated that there is overlap between issues raised by GAC in the letter and pending issues from the Board.

John McElwaine, GNSO Council Vice-chair, leadership and Council need to see when it makes sense in this process to address the issues raised in the 23 March 2023 GAC letter. He affirmed that the small team's thoughts on the issues would be useful.

Sebastien Ducos, GNSO Chair, thanked the small team for their work, and Becky Burr, ICANN Board and Avri Doria, ICANN Board, for their participation in their small team. He also thanked Org staff, in

particular Steve Chan for their work. Sebastien Ducos, encouraged councilors to discuss with their Stakeholder Groups and Constituencies.

Item 3: ANY OTHER BUSINESS

NONE

Sebastien Ducos, GNSO Chair, adjourned the meeting at 14:44 UTC.

The next GNSO Council meeting will take place on Thursday 25 May 2023 at 05:00 UTC