Minutes of the GNSO Council Meeting 14 February 2019
[Agenda](#) **and** [Documents](#)

Coordinated Universal Time: 21:00 UTC: https://tinyurl.com/yaxwuj6w

13:00 Los Angeles; 16:00 Washington; 21:00 London; (Friday) 02:00 Islamabad; 06:00 Tokyo; 08:00 Melbourne

List of attendees:
Nominating Committee Appointee (NCA): **– Non-Voting** – Erika Mann (apologies sent)
Contracted Parties House
Registrars Stakeholder Group: Pam Little, Michele Neylon, Darcy Southwell
Registries Stakeholder Group: Maxim Alzoba, Keith Drazek, Rubens Kühl
Nominating Committee Appointee (NCA): Carlos Raul Gutierrez (on audio only)
Non-Contracted Parties House
Commercial Stakeholder Group (CSG): Marie Pattullo, Scott McCormick, Philippe Fouquart, Osvaldo Novoa , Paul McGrady, Flip Petillion
Non-Commercial Stakeholder Group (NCSG): Martin Silva Valent, Elsa Saade, Tatiana Tropina, Rafik Dammak, Ayden Férdeline (apology, proxy to Martin Silva Valent), Arsène Tungali
Nominating Committee Appointee (NCA): Syed Ismail Shah (absent)
GNSO Council Liaisons/Observers:
Cheryl Langdon-Orr– ALAC Liaison
Julf (Johan) Helsingius– GNSO liaison to the GAC
Adebiyi Oladipo – ccNSO observer

Special guests:
Kurt Pritz and Heather Forrest

ICANN Staff
David Olive -Senior Vice President, Policy Development Support and Managing Manager
Marika Konings – Vice President, Policy Development Support – GNSO (apology)
Mary Wong – Vice President, Strategic Community Operations, Planning and Engagement
Julie Hedlund – Policy Director
Steve Chan – Policy Director
Berry Cobb – Policy Consultant
Emily Barabas – Policy Manager (apology)
Ariel Liang – Policy Support Specialist
Caitlin Tubergen – Policy Senior Manager
Sara Caplis – Technical Support
Nathalie Peregrine – Manager, Operations Support
Terri Agnew - Operations Support - GNSO Lead Administrator

[MP3 Recording](#)
[Transcript](#)

Item 1. Administrative Matters

1.1 - Roll Call

1.2 - Updates to Statements of Interest

Cheryl Langdon-Orr notified the GNSO Council that she will be a co-chair to the third Accountability and Transparency review (ATRT3).

1.3 - Review / Amend Agenda

Agenda was approved without objection.

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 20 December 2018 were posted on the 7 January 2019

Minutes of the GNSO Council meeting on the 24 January 2019 were posted on the 7 February 2019

1.5 - Welcome to new ISPCP councilor

Keith Drazek welcomed **Osvaldo Novoa** (SOI) to the GNSO Council as ISPCP councilor. Tony Harris resigned from his position as previous ISPCP councilor.

Item 2. Consent Agenda (none)

Item 3: COUNCIL DISCUSSION - Final Report of the Expedited Policy Development Process (EPDP) on the ICANN Board Temporary Specification on gTLD Registration Data

Keith Drazek reminded councilors that this was an opportunity to discuss short term next steps with the current EPDP Leadership. There is also a call scheduled for the 21 February 2019 for councilors to consider and possibly vote on the EPDP Final Report. If a deferral is to take place on the 21 February 2019 there will be a second opportunity to vote during a special Council meeting on the 4th March 2019. It will be key for the Final Report to be approved prior to ICANN64 in Kobe. Once the GNSO Council approves the Final Report there will be a 40 day Public Comment period, followed by Board consideration and vote which must take place before the 25th May 2019 before the Temporary Specification expires.

Kurt Pritz, chair of the EPDP, encouraged councilors to review the current draft Final Report of the EPDP team as the timeline is extremely tight. He noted that every group within the EPDP team made compromises necessary to consensus in an extraordinary multistakeholder effort.

Caitlin Tubergen, ICANN staff, presented to the GNSO Council (slide deck) a high level overview of the Report which has 21 policy recommendations. Recommendation 1 has seven identified purposes for processing registration data. Recommendations 5,7,8 and 9 detail the collection and transfer of specifically identified data elements. The difference between the Initial Report and the draft Final Report is that those data elements are now within the body of the Final Report recommendation, but a small Data Elements team has been working on Annex D, which provides more detail on data flow. Recommendation 10 to 12 details the display and redaction of specifically identified data elements. Recommendations 21 to 25 and 27 refer to the treatment of the current ICANN consensus policies. Recommendation 28 provides the text for the proposed implementation bridge.
Recommendations have also been classified as categories for ease of reference.

Caitlin Tubergen then reminded councilors of the steps taken since the close of the Public Comment of the Initial Report. The EPDP reviewed all comments involving potential changes or concerns. Support staff compiled the draft Final Report and circulated to the Council. Beginning on 11 February 2019, a "quiet review" period began to allow EPDP members to flag inconsistencies and prepare statements which would be added to the annex in the report in the Final Report. Any inconsistencies flagged will be dealt with by the EPDP team at the end of the "quiet review" period.
Consensus designations have been noted in the report, some of them have been sent to the EPDP team with the opportunity to comment on them. Others have not been sent yet for review and others are still open for discussion. Regarding the open recommendations, they have been agreed on in principle by the team, but the draft language is still under discussion which will close on 15 February 2019.
There will be a final consensus call on the Final Report as a whole.

Kurt Pritz noted that there were several innovations in the EPDP, including guidance from the charter, which were beneficial. He also clarified that this is a draft report, for councilors to preview in advance of the Final Report. There have been consensus calls on most on the recommendations, although some are awaiting advice from the legal counsel. The EPDP team recognised that there were complex, legal and operational issues which needed to be considered before recommendations were made. Equally, several issues could not be settled within the tight timeframe, therefore several recommendations will be considered in Phase 2 along with the access model. Annex B, the data analysis, was key to enable discussion on data flow, and data process control.

Councilors then had the opportunity to ask questions to the EPDP leadership team.

Michele Neylon thanked Kurt Pritz, the leadership team and the team members for their tremendous efforts.

Tatiana Tropina seconded Michele Neylon and wondered what differences there would be between the draft Final Report and the final iteration and if there would be a red-lined document outlining them. She also asked for more clarification regarding the implementation stage and whether the Council would vote on the full report or individual recommendations.

Keith Drazek responded regarding the vote, that the [draft motion](#) covers the Final Report and the GNSO Council's non-objection to allow the EPDP to continue to Phase 2. Concerning implementation, **Keith Drazek** mentioned that this would be an ongoing discussion given that there would be considerable effort needed both for implementation work on Phase 1 and also for getting Phase 2 work underway.

Paul McGrady asked if there would be an Implementation Review Team. Keith Drazek acknowledged that this would be the case, but reminded councilors that the formal structure would only in place once ICANN Board had voted.

Darcy Southwell asked about the Public Comment period after the GNSO Council had approved the FInal Report and how this would impact the timeline. **Kurt Pritz** responded that this Public Comment period would be similar to the one held for the Initial Report.

Elsa Saade wondered if there were any substantial issues that the external legal counsel highlighted when the EPDP team took their advice. **Kurt Pritz** replied that the EPDP team had posed six specific questions to the legal counsel and received responses in form of [legal memoranda](#) to five of those. The outstanding question concerned recommendation 11 on whether the city name Whois should be redacted or not. There is an additional question which will also be posed for Phase 2.

Marie Pattullo thanked everyone on the EPDP team for their extraordinary work. Marie Pattullo asked if the 40 day Public Comment period was set in stone or whether it could be shortened. **Keith Drazek** responded that this has been a period used traditionally. He noted that collaboration with Cherine Chalaby had permitted to find extra time before the expiration date, but that the Public Comment duration of 40 days was confirmed. Staff reminded the Council that there is a 21 day minimum period for GNSO Public Comments.

Paul McGrady asked whether the implementation work could start before the expiration of the Temporary Specification. **Keith Drazek** responded that when the GNSO Council worked on the EPDP charter, additional time was chartered into the timeline to allow for an implementation phase. However this will not be possible now before 25 May 2019. What is currently in the draft Final Report is the option for Contracted Party Houses to continue to perform under on the temporary specification terms until 29 February 2020 or move to implementing the new consensus policy.

Pam Little had a question about consensus designation for all the recommendations: in the Final Report, would there be a designation indicated for each recommendation or will there be one for the Final Report. She also asked how consensus was measured for each recommendation.

Kurt Pritz clarified that as each issue is discussed, time is spent attempting to seek agreement from all parties. CBI, the facilitation team, were key in enabling this. There were no consensus calls on each of the recommendations, but purposes were combined to allow for discussion and feedback within a deadline. **Kurt Pritz** labelled many recommendations as full consensus/ consensus for clarity reasons, and to highlight that several recommendations derived from high levels of compromise. It also allows for statements to accompany the recommendations.

Keith Drazek closed the agenda item by reminding the councilors of the next steps: two opportunities for the GNSO Council to approve the Final Report, after having worked with Stakeholder Groups (SGs) and Constituencies (Cs.) He also asked the GNSO Council whether a timeline would need to be worked on the Phase 2 to ensure the same level of urgency as for Phase 1.

Michele Neylon noted that it would be better to be able to vote on the 21 February 2019 rather than wait until the 4 March 2019.

Keith Drazek thanked Kurt Pritz and Rafik Dammak as well as the support staff of the EPDP team.

Action Items:
- *Council leadership* to propose ways to balance informal implementation of EPDP recommendations and phase 2 workload.
- *EPDP Team* to package legal questions/answers and the updated Final Report with consensus level designation of each recommendation for review by the Council.

Item 4: COUNCIL DISCUSSION – IGO-INGO Access to Curative Rights Protection Mechanisms

Keith Drazek reminded councilors that they received the Final Report of the IGO INGO Curative Rights Protection Mechanisms (CRP) in 2018. Due to the complexity of the matter, and a low membership, the recommendations in the Final Report are being challenged. Keith Drazek encouraged councilors to pay close attention to the issues raised as the GNSO Council is at crossroads depending on the decision it

decides upon. GNSO Council leadership put forward proposals on how to deal with the five recommendations:
- approve the four recommendations which do not impact consensus policy and forward the fifth (impacting consensus policy) to the Rights Protection Mechanisms (RPM) Policy Development Process (PDP) Working Group (WG)
- Approve the four recommendations and maybe create another group to focus on the 5th recommendation or the larger issues.
- Approve the Final Report and forward it to the Board, despite recommendations being in conflict with Governmental Advisory Committee (GAC) advice
- Reject all recommendations.

Heather Forrest, invited to speak to the IGO INGO Curative Rights Protection Mechanisms topic, acknowledged the challenging aspect of the question. She commended ICANN staff for their work on the question. **Heather Forrest** noted that the CRP charter contained extremely complex questions not usually confronted by the GNSO Community. She noted that she had raised concerns about the procedural aspect and the low representation on the PDP and the precedence on the definition of consensus.

Carlos Gutierrez raised the fact that the GNSO Council had been delayed in noting the issues taking place in the CRP PDP. He also mentioned that whereas for a specific IGO (Red Cross) a solution had been found, for other IGOs it had not and that this potentially would be negatively perceived by the GAC.

Paul McGrady stated that what the PDP did not address what GAC requested the PDP to produce. If the GNSO Council accepts even four out of five recommendations, the issue remains between the Board and the GAC. He also raised the fact that many have designated the process as flawed. He suggested the Final Report be rejected and the PDP be reopened with the new PDP3.0 rules.

Keith Drazek noted that this could be an option, but that IGOs would need to commit to participate actively in the effort.

Marie Pattullo seconded Paul Mcgrady's proposal and added that there is the capability to resolve the issue within ICANN capabilities. Another concern is also the lack of legal knowledge within the GNSO to tackle certain issues the PDP encountered which is why **Marie Pattullo** opposed sending recommendation 5 to the RPM WG.

Elsa Saade questioned the point of re-chartering the PDP as dwindling participation was also due to lobbying and back-channeling. Elsa, in her own capacity, supported the Council approving the Final Report to not create a precedent in GNSO PDP history.

Carlos Gutierrez agreed that participation was low and representation unequal.

Keith Drazek reminded councilors that correspondence had been exchanged with Manal Ismail, GAC Chair and that a GNSO & GAC leadership team call had taken place, where it was agreed to continue discussion with the GAC in Kobe.

Philippe Fouquart echo-ed Elsa Saade's point of view regarding the benefits of re-chartering the PDP. He questioned whether applying PDP3.0 would garner different results

Michele Neylon noted that the next steps were unclear and wondered if there was a deadline for a decision. **Keith Drazek** replied that the meeting underway was for informational purposes mainly, but that the GNSO Council reaching a decision during the April 2019 GNSO Council meeting, after further discussion with the GAC in Kobe.

Heather Forrest clarified her previous statement on participation numbers and mentioned she would forward precise figures.

Pam Little raised the subject of the letter sent by 9 CRP members to ICANN Org in August 2018, and questioned whether the process was flawed and whether dwindling participation towards the end of a PDP was unusual.

Keith Drazek reminded councilors that the correspondence raised by Pam Little followed minority statements by the co-chairs.

Rafik Dammak noted that this issue needed to be resolved rapidly but that decisions need to be made with caution as they will set a precedent. Re-chartering does not guarantee better outcomes. Re-chartering is also inconsistent with the goals behind PDP 3.0 in term of effectiveness and best usage or resources.There is an existing process which would need to be used at best.

Keith Drazek recognised the GNSO Council need to take responsibility for previous failings at managing the PDP, and how PDP3.0 would help avoid this moving forward.

Mary Wong clarified that the vote on the recommendations 1 to 4 would be a simple majority. For recommendation 5 impacting consensus policy a supermajority vote would be necessary. Mary Wong then commented on the letter sent by the 9 CRP members, specifying that not all these members were representatives of the groups they stated they represented upon becoming members of the PDP.

Keith Drazek closed the meeting by reminding councilors that the topics of the meeting were going to require close attention for the upcoming weeks. He added that GNSO Council leadership and support staff would be available to provide additional documentation should this be required.

Action Item:
- Develop a new options document to include proposed motion language for each option for Council consideration

Keith Drazek adjourned the GNSO Council meeting at 23:02 UTC on Thursday 14 February 2019. The next Council meeting is scheduled for Thursday 21 February 2019 at 12:00 UTC.