Minutes of the GNSO Council Meeting 19 September 2019
Agenda and Documents
Coordinated Universal Time: 21:00 UTC: https://tinyurl.com/y29q6mfl

14:00 Los Angeles; 17:00 Washington; 22:00 London; (next day) 02:00 Islamabad; 06:00 Tokyo; 07:00 Melbourne

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

Guest speaker: ICANN Org: Karen Lentz

ICANN Staff
David Olive -Senior Vice President, Policy Development Support and Managing Manager, ICANN Regional (apologies)
Marika Konings – Vice President, Policy Development Support – GNSO
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
Ariel Liang – Policy Support Specialist
Caitlin Tubergen – Policy Senior Manager
Nathalie Peregrine – Manager, Operations (apologies)
Andrea Glandon - Operations Support - GNSO Coordinator
Terri Agnew - Operations Support - GNSO Lead Administrator

Audio Recording
Transcript

Item 1: Administrative Matters

1.1 - Roll Call

1.2 - Updates to Statements of Interest

- **Tatiana Tropina** has moved to Holland and is now working as an assistant professor of cybersecurity governance at Leiden University in The Hague. (SOI)

1.3 - Review / Amend Agenda

- **Keith Drazek** did a review of the agenda. It 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 the 18 July 2019 were posted on the 02 August 2019

Minutes of the GNSO Council meeting on the 22 August 2019 were posted on the 6 September 2019

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

2.1 - Review focus areas and provide updates on specific key themes / topics, to include review of Projects List and Action Item List

- **Keith Drazek** deferred the review of projects list and action items to the end of the call.

Item 3: Consent Agenda

None

Item 4: COUNCIL DISCUSSION – ICANN Board referrals of CCT-RT recommendations to GNSO Council and GNSO PDP WGs

On 10 June 2019, ICANN org communicated to the GNSO Council that the ICANN Board resolution passed on 1 March 2019 – see https://www.icann.org/resources/board-material/resolutions-2019-03-01-en [icann.org] - calls for a set of Competition, Consumer Trust, and Consumer Choice Review Team (CCT-RT) Final Recommendations to be passed through to community groups. The Council was specifically invited to review to pages 1-4 of the scorecard https://www.icann.org/en/system/files/files/resolutions-final-cct-recs-scorecard-01mar19-en.pdf[icann.org] which compile pass-through recommendations, including the groups they are addressed to.

Keith Drazek reminded councilors that there has been a small team of councilors working on the topic. Next steps need to be discussed in regards to Council's response and coordination with the PDPs.

Pam Little Carlos Guiterrez, **Pam Little** & **Michele Neylon** are the small team who drafted the proposed response. **Pam Little** provided an overview to the Council.There are 5 recommendations presented in a table format of the recommendations.

First is number 10; CCT Review Team recommended that the GNSO initiate a new policy to create a consistent privacy baseline across all registries, the team feels it is not appropriate for the council to initiate such a PDP at this time. The rationale is that this is overtaken by events such as GDPR and

EPDP. The recommendation says “For clarification, this recommendation does not relate to issues involving WHOIS or registration directory services data” the small team feels that is only the part that really is within ICANN or GNSO’s remit.

The next one is recommendation 16, about abuse. The small team’s recommendation was directed to ICANN board, the Registry Stakeholder Group, the GNSO and SubPro. The recommendation has 2 aspects, the DAAR project or the Domain Abuse Activity Reporting initiative, the small team suggested that such aspects should be directed to ICANN’s Office of the Chief Technology Officer. The second aspect is about enforcement if the data identified bad actors. This part should be directed to ICANN’s Contractual Compliance. The team wants to acknowledge that this is an important topic within the ICANN community and there is ongoing dialogue but the current recommendation should be directed to ICANN Org.

The next recommendation 27, the inoperability of the URS and UDRP. The small team suggested this be directed to the RPM Working Group, while being sensitive to the fact that the working group is in their last mile.

Recommendation 28, recommending a cost and benefit analysis of the TMCH. From **Pam Little’s** research, there was no such cost and benefit analysis done during the RPM Working Group’s Phase 1. The small team feels this recommendation should be referred back to the RPM Working Group and seek their feedback.

Recommendation 29; set objective metrics for application from the global south. The small team suggests referring this recommendation to the SubPro Working Group.

Regarding timing, the small team recommended submitting council responses to the board now to keep the momentum going.

Councilors agreed with the small team on the timing point. With no further input **Pam Little** suggested the draft letter be put out for one additional week after the Council meeting with a deadline of Thursday, 26 September 2019.

Action items:

- *Councilors* to review and send comments, if applicable, by 26 September 2019.
- *Council leadership* to subsequently draft the cover letter and send response to the ICANN Board, shortly thereafter.

Item 5: COUNCIL DISCUSSION – Draft Amendments to the Review of All Rights Protection Mechanisms in All gTLDs Charter to Integrate Recommendation 5 From IGO-INGO Access to Curative Rights Protection Mechanisms Final Report

Paul McGrady only being available for the beginning of the call, agenda items 5 and 6 were swapped.

A small team of Councilors was convened to prepare draft amendments to the RPMs PDP charter, which was shared with the Council on 10 September 2019.

Consultation with the GAC/IGOs is still required before a motion can be submitted.

Paul McGrady presented an overview for discussion with councilors. The small team of Paul McGrady, Maarten Valent and Elsa Saade (via email) discussed putting together a narrow scope group (in keeping with PDP3.0 recommendations and ICANN's Standards of Behaviour and composed of WT5 and GAC/IGOs) to address the problem of IGO's prevailing in the UDRP or URS. Paul McGrady provided the example of when the losing registrant fails in court and the IGO can either submit to jurisdiction or claim immunity. The small team is proposing a work track that does not belong to phase 1 or phase 2 of the RPM PDP WG. This particular IGO work track would be restricted to this one issue. The questions that remain are, do we want to establish the independent work track to deal with this issue? If so, what would it look like? The proposition is a PDP 3.0 approach. The small team would like members to have a basic understanding of the issues including international IP law & arbitration. The small group is proposing the Registry Stakeholder Group (RySG) and the Registrar Stakeholder Group (RrSG) would appoint up to two members. Both the Commercial Stakeholder Group (CSG) and the Non Commercial Stakeholder Group (NCSG) would appoint 4. In addition to this, two members each from interested Supporting Organizations (SOs) and Advisory Committees (ACs). Two members would be appointed by IGOs.

Elsa Saade stated that she does have detailed comments, although she was not able to engage in the development of the addendum charter and will follow up with an email. **Elsa Saade** mentioned the end of section 3 as being problematic: "The GNSO Council recognizes that, while it wishes for the IGO work track to develop recommendations that are generally consistent with Recommendations 1 through 4 from the IGO/INGO Access to Curative Rights Protection Mechanisms PDP final report, it is possible that the final recommendations may supersede or affect the scope of those four previous recommendations." She stated that the only recommendation that should be discussed is recommendation 5 due to 1-4 being final.

Keith Drazek reminded councilors that the council has delivered their recommendations on 1-4, but the board has not taken action yet.

Tatiana Tropina raised that she was not comfortable with discussing 1-4 given that the board has not approved them yet.

Keith Drazek clarified that the language merely suggested that existing policy recommendations can only be replaced by new policy recommendations.

Maxim Alzoba spoke about his suggestion that was sent by email right before the council meeting.

Paul McGrady stated that he doesn't feel the council can necessarily say that recommendations 1-4 can't be changed. The paragraph, as referenced by Elsa, was put in to warn people that it could happen.

In the interest of time, **Keith Drazek** asked for this discussion to be taken offline. Keith asked Paul to keep working with the small team and encouraged councilors to provide input over the next two weeks so that it can be voted on during the October meeting or during ICANN66. Keith also noted that the Council leadership would soon share the draft charter with the GAC leadership and IGO's with a goal of ensuring their participation in the new group.

Action item:

- *Small team* to address Councilors' feedback (e.g., language about new recommendations superseding recommendations 1-4, ensuring technical expertise is available and team composition) and deliver a revised draft by 27 September for Council review. After Council review, send draft to GAC/IGOs for their review prior to Council vote.

Item 6: COUNCIL DISCUSSION – Discussion of the Inter-Registrar Transfer Policy (IRTP) Policy Status Report and Council next steps

The Consensus Policy Implementation Framework (CPIF) provides guidance to ICANN org and the community for implementing policy. However, there is minimal guidance in this document or in other documentation around the review of implemented policies adopted by the GNSO Council. In some cases, a review is explicitly mandated as an element of the PDP WG's recommendations to the Council, but in some cases, the recommendations are silent in this respect.

Pam Little reminded council that the next step is to decide how to conduct this review of the transfer policy and that this is separate from EPDP Recommendation 27. The feedback received from the RrSG includes a preference that the scope follows a more holistic approach with a PDP working group composition similar to the EPDP. Pam Little suggested a scope drafting team (similar to what has been done with the IDN issue) to formalize recommendations on scoping and related issues to the Council.

Michele Neylon brought up that this issue is causing stress for many registrars around the Forms of Authorization (FOA) requirements. **Pam Little** clarified that the FOA issue could be prioritized as part of the review.

Keith Drazek stated the council has an obligation to take the IRTP status report and decide next steps.Those interested should reach out to **Pam Little**.

Action items:

- *Council* to convene a small focused drafting team (e.g., like the IDN Scoping Team) to review several items, including at least the review of the ICANN Policy Status Report, considering the possibility of policy development mechanisms, and the form of authorization (FOA) issues.
- *ICANN Staff* to circulate call for volunteers to form small drafting team

Item 7: COUNCIL DISCUSSION – ICANN Org's Request for Clarification on Data Accuracy and Phase-2 of the Expedited Policy Development Process (EPDP) on the Temporary Specification for gTLD Registration Data

On 21 June 2019, the GNSO Council received a letter from ICANN Org, which was seeking a better understanding of the Expedited Policy Development Process (EPDP) Team's plans "to consider the subject of "data accuracy" as it relates to gTLD registration data and related services, such as the WHOIS Accuracy Reporting System (ARS)."

Keith Drazek summarized this item, reminding councilors that council received a letter from Goran Marby on 21 June asking for the council's views on the discussion of the subject of data accuracy as it relates to gTLD registration data and related services, such as the WHOIS Accuracy Reporting System. There has been a small team of councilors working to draft a response. **Darcy Southwell**, **Marie Pattullo** and **Flip Petillion** are part of the small group.

Marie Pattullo stated there is a Google document, but it has not been circulated. The group has drafted a short response to Goran, but there is disagreement within the small team. . First, they stated that ICANN needs further guidance on how data accuracy will be considered. Next, the EPDP phase 2 team has solicited legal analysis on the accuracy requirements and is in the process of posing additional questions to council before concluding its analysis. The divergence within the small group comes on what to say

next. **Flip Petillion** and **Marie Pattullo** suggested that if ICANN Org have ARS - related questions, they could raise them to the EPDP and keep publishing ARS reports. They also thought it would be useful for all to know if ICANN itself is looking at an update for ARS in cases where ICANN itself is asserting its own purposes for processing data. The small team also queried why RDS Review Team final report hasn't been published. Darcy Southwell commented on the Google doc that she would prefer to wait for the legal analysis on data accuracy requirements before moving ahead with the above suggestions

Rafik Dammak spoke regarding this issue mentioning that ARS is not a consensus policy and it is a tool. The council therefore needs to be cautious about the workload placed on the EPDP which cannot be the place where all RDS and WHOIS issues are trying to be fixed. As the policy manager, council needs to handle this more carefully.

Pam Little placed in chat a link to the WHOIS 2 Review Team's final report. There was a memo of legal advice from Bird & Bird about the question of data accuracy in response to EPDP Phase 2 questions. The EPDP 2 is in the process of formulating further clarifying questions in response in a legal memo. From the Bird & Bird memo it seemed clear that this is a matter for the data controller, ICANN Org, to decide. Regarding the ARS, Pam Little raised that there is a misunderstanding on the part of colleagues that it is an existing policy. It is a tool ICANN developed to further their compliance work on the WHOIS accuracy obligations under the RAA contract. Pam was unsure whether the current content of the letter is appropriate. She suggests going back to Goran and stating the EPDP is still working on certain clarifying questions to be sent to the outside legal counsel.

Keith Drazek encouraged further discussion on the list or in the small group. He acknowledged that there does need to be a response and it could take different forms (a response indicating that the council is watching this and that the EPDP is considering the work that Pam Little described or Council could go back to Goran and ask some clarifying questions about the references to ARS or to the topic more generally). **Keith Drazek** raised that suggesting ICANN org communicate directly with the EPDP Working Group might be problematic.

Marika Konings from staff stated that whilst accuracy had been identified as a phase 2 item, it is solely based on a one-line footnote from the phase 1 report that noted that accuracy in the context of GDPR is to be further considered, including ARS. It doesn't provide any specific guidance on what kind of questions are expected to be considered.

Keith Drazek asked for this to be taken to the small group.

Elsa Saade had a clarifying question about the footnote, stating that it doesn't necessarily say that EPDP Phase 2 will be dealing with accuracy. Marika Konings agreed.

Action item:

- *Councilors* to provide input by **7 October 2019**. *Small team* to address Councilors' feedback and complete revised draft for Council review and approval for sending to ICANN org.

Item 8: COUNCIL DISCUSSION - EPDP P1 Recommendation 27: ICANN Org's Assessment of Impact From GDPR on Existing Policies / Procedures

In the Temporary Specification for gTLD Registration Data Expedited Policy Development Process Team Phase 1 (EPDP P1) Final Report, recommendation #27 asked that during the implementation of the policy

recommendations, existing policies / procedures be made consistent with the changes to required data elements.

ICANN org prepared a draft work plan to address EPDP Phase 1 Recommendation 27, which was shared with the GNSO Council and IRT on 27 August.

Keith Drazek discussed the plenary session that was held at ICANN65 and the meeting that council leadership held with Karen Lentz from ICANN Org to discuss the approach that is going to be used. The work plan has been circulated to the council list. **Keith Drazek** reminded councilors that responsibility will be shared between Council, the Implementation Review Team and ICANN Org.

Karen Lentz, ICANN Org, went through a presentation that was sent to the council in August. Rec 27 from the EPDP Phase 1 team noted that as part of the implementation process of their recommendations they foresee updates to existing policies and procedures because of the impact of the recommendation that they were making. Regarding the work organization, they are thinking about it in three parts. 1) identify what the impacted areas are 2) Review and validate what is there 3) Triage. ICANN has started the inventory part. It is expected that will be shared with the GNSO Council. Karen Lentz envisions sharing this inventory as a first step with the phase 1 IRT for any inputs that they may have in terms of content. Karen Lentz expects that there will be a bucket of items and identified impacts that will be delivered to council who will then be expected to communicate and share with the broader GNSO Stakeholder community whilst making sure that EPDP Phase 2 is aware of their work and status. There is also a timeline of how they envisioned delivering the inventory and having it go through the community process in two waves. Wave 1 is expected to be delivered to the IRT before ICANN66 and then to the GNSO Council before the end of the year. Wave 2 will be in parallel with some of the other periods, allowing time to include anything missed.

Keith Drazek noted that the final date of the week of 24 February 2020 could be ambitious. **Maxim Alzoba** asked if the AGB is something to be looked into for compatibility with GDPR? Karen Lentz replied that it would be worth looking at, but that the timing might lend itself to occur in a more in-depth way when there are Subsequent Procedures recommendations.

There was a question in the chat from **Rubens Kühl** about whether this effort should cover the WHOIS, with agreement from **Maxim Alzoba**. **Keith Drazek** asked for this to be taken offline.

Item 9: COUNCIL DISCUSSION - PDP 3.0 Small Group Update/Discussion

In advance of the 22 August 2019 GNSO Council meeting, the PDP 3.0 Small Team completed five (5) out of fourteen (14) PDP 3.0 improvements, provided an update, and requested feedback by 13 September 2019. Work continued on the rest of the nine (9) improvements in the pipeline, which are at various levels of progress. While a number of improvements are nearing completion, they are not yet at a point where they are ready for Council review.

The PDP 3.0 small group has prepared a work plan that covers items leading up to ICANN66, as well as additional elements needed to complete the project.

Rafik Dammak presented five packages they are aiming to send to council. The first was sent prior to the previous council meeting. The next package that the team is aiming to send to council is #2. The target dates were listed in the slides. On the final package #5, there is still much work to be done and will happen just after ICANN66. The timeline is set up to try to submit the package prior to the council meeting

in order to allow all councilors to review and share their input. The team is also aiming to have a meeting during ICANN66 and use the council session for seeking feedback for improvement and engagement with Brian Cute. The small team can provide a factual overview of the PDP 3.0 implementation status. The small team would like to engage with Brian Cute and explain the work they are doing. The aim is for this to be done during the GNSO Working Session at ICANN66, it would not be just the PDP 3.0 small team. If this cannot be done, then a meeting between Brian and the small team can be organized after ICANN66. Post ICANN66 the team is thinking about organizing a special purpose webinar or having an extraordinary council meeting to catch up the incoming councilors. **Rafik Dammak** stated that the team is counting on the councilors to share the continued improvements with the respective groups. Post ICANN66 the small group needs to revise the PDP Working Group's charter template and to work on consistency and the dependency between related improvement as well as dry run some selected improvements.

Cheryl Langdon-Orr asked how or when any interaction with interested groups outside of the GNSO, such as ALAC, will take place, this question will be taken offline.

Action item:

- *PDP 3.0* team to consider how input from outside the GNSO can be solicited.

Item 10: COUNCIL DISCUSSION - Draft Response to the Verisign Request to Defer Enforcement of the Thick WHOIS Transition Policy

On 29 July 2019, Verisign wrote to ICANN org again requesting an extension to the current implementation plan for the Thick WHOIS Transition Policy by one year. The ICANN Board wrote to the GNSO Council, asking for the Council's views on whether it believes the request should be granted. The ICANN Board requested response during or immediately following the GNSO Council meeting on 19 September. A draft response was circulated on 6 September, which notes the expected policy work related to the Thick WHOIS Transition Policy, but also notes that the request for deferral is from an ICANN Contracted Party and is not a matter of policy development.

This was handed to **Rafik Dammak** and **Pam Little**, due to **Keith Drazek** being employed by Verisign.

Rafik Dammak stated that since the request is from an ICANN contracted party, the council view is that the matter is not within the purview of the GNSO Council and it is the responsibility of ICANN Org to make the determination.

Pam Little pointed out the distinction that is being drawn between a request from an ICANN Contracted Party vs a from a stakeholder group.

Rafik Dammak stated that in the absence of objection the letter should be sent.

Action item:

- *Council leadership* to send letter to ICANN Board.

Item 11: COUNCIL DISCUSSION - Draft Response to Questions on the Independent Review Process Oversight Team (IRP-IOT)

On 09 May 2019, ICANN org published a Call to Action for the Independent Review Process Standing Panel, which was intended to help the Independent Review Process Implementation Oversight Team (IRP-IOT) in its critical role of implementing the updated IRP. ICANN org published a series of questions, posed to the various Supporting Organizations and Advisory Committees, seeking input to pending issues.

Flip Petillion stated the team had been asked to answer key questions including the qualification question for members of a standing panel and identifying a slate of well-qualified panelists.

Elsa Saade thanked Julie Hedlund, ICANN Org, for assistance with the draft and encouraged the councilors to read the draft. Elsa Saade also sent an email to the list regarding discrepancies between herself and Flip. Elsa Saade noted that it is important for council to place their trust in the SOs and ACs to have the expertise instead of relying on external parties.

Keith Drazek noted that the establishment of this standing panel, the selection of the members and the process are critically important.

Action item:

- *Councilors* to provide input by **30 September 2019**. *Small team* to address Councilors feedback, if applicable, and complete revised draft for sending to ICANN org.

Item 12: ANY OTHER BUSINESS

12.1 - Draft GNSO Council letter to the ICANN Board regarding potential dependencies between the Name Collisions Analysis Project (NCAP) and New gTLD Subsequent Procedures.

Keith Drazek summarized the letter noting that it is asking the Board to elaborate on comments that it made in the resolution drafted on NCAP during the ICANN64 meeting in Kobe. Keith Drazek stated that unless there were objections the letter would be sent by COB on Friday, 20 September 2019.

Action item:

- *Council leadership* to send letter to ICANN Board.

12.2 - Approval of the 2019 slate of Members and Liaisons on the Customer Standing Committee (CSC) - possible email vote

Keith Drazek noted that a member of the Customer Standing Committee had to resign so the RySG has been going through the process of identifying a replacement candidate. There will likely need to be an email vote of the council to approve the replacement member.

Keith Drazek sent a note to the email list on Wednesday, 18 September that council leadership is working with staff to plan the GNSO Strategic Planning Session (SPS) in Los Angeles in January 2020. The expectation is that Friday, the last day of the SPS will be a full working day that will culminate in a

meeting with the Board and then drinks with the Board. Friday night is an approved hotel day, please ensure when booking travel to stay through Friday,

Michele Neylon stated he feels ICANN travel would have already been in touch regarding travel for the SPS.

NEW: 12.3 - Invitation to Provide Feedback on the ICANN Board's Proposed Public Interest Framework

Pam Little added the ICANN Board's invitation to provide feedback on the Board's proposed public interest framework to the Council agenda. Two webinars on the topic were held this week. Pam suggested the council should form a small team of volunteers to draft the comment.

Action items:

- *Council* to convene a small drafting team to formulate a response to the public comment period.
- ICANN *Staff to circulate call for volunteers to form small drafting team.*

Keith Drazek *adjourned the meeting at 23:03 UTC on Thursday 19 September 2019.*