Minutes of the GNSO Council Meeting 20 August 2020

Agenda and Documents

Coordinated Universal Time: 21:00 UTC: https://tinyurl.com/yxmzdw5m

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

List of attendees:

Nominating Committee Appointee (NCA): – Non-Voting – Erika Mann

Contracted Parties House

Registrar Stakeholder Group: Pam Little, Michele Neylon, Greg DiBiase

gTLD Registries Stakeholder Group: Maxim Alzoba, Keith Drazek, Sebastien Ducos

Nominating Committee Appointee (NCA): Tom Dale

Non-Contracted Parties House

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

Non-Commercial Stakeholder Group (NCSG): Juan Manuel Rojas, Elsa Saade (apology, proxy to James Gannon), Tatiana Tropina, Rafik Dammak, Farell Folly, James Gannon

Nominating Committee Appointee (NCA): Carlton Samuels (absent)

GNSO Council Liaisons/Observers :

Cheryl Langdon-Orr– ALAC Liaison

Julf (Johan) Helsingius– GNSO liaison to the GAC

Maarten Simon – ccNSO observer

ICANN Staff

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

Marika Konings – Senior Advisor, Special Projects

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

Terri Agnew - Operations Support, Lead Administrator

Nathalie Peregrine – Manager, Operations GNSO

Item 1: Administrative Matters

1.1 - Roll Call

1.2 - Updates to Statements of Interest

Sebastien Ducos (SOI) announced that Neustar has been bought by GoDaddy and is now a GoDaddy registry.

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 Extraordinary GNSO Council meeting on 16 July 2020 were posted on the 30 July 2020

Minutes of the GNSO Council meeting on 23 July 2020 were posted on 12 August 2020.

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

Berry Cobb reminded councilors that most of the updates to the Project List had been circulated on the Council mailing list at the beginning of the week. The main change is the migration of EPDP P2 to the Council deliberations section.

Michele Neylon noted that the Whois Implementation Advisory Committee has been discussed amongst the small team and further updates will be provided shortly.

Sebastien Ducos raised that Council is tasked with handling work which has many dependencies, many of which councillors might not be familiar with, and thus may struggle to have an opinion. He suggested that staff propose two or three solutions as to how to manage the prioritization effort. He added that this was urgent also for perception purposes.

Philippe Fouquart concurred that a simplified version would be welcome.

Rafik Dammak responded that it was extremely difficult to lay out ways forward precisely given the lack of knowledge/data available at one given time.

Keith Drazek reminded councilors that it had been complicated to begin considering new work until EPDP efforts and PDP developments were nearing completion. However the discussion on prioritization had been key in moving work forward.

Sebastien Ducos clarified that he would like shorter term items to allow for item completion.

Steve Chan, Org, agreed the tools developed were a start to identifying work coming up in the pipelines and that they would evolve. The key would be to look at it like a logical sequencing of the work. The Action Decision Radar document is helpful to identify work arriving in 1 - 3 months but also 3 - 6 months.

Maxim Alzoba suggested that a very clear scale of prioritization would be helpful.

Regarding the open Action items, not being dealt with in today's main agenda, **Keith Drazek** provided the following updates:

- Cross Community Working Group (CCWG) Accountability Work Stream 2 (WS2): A Council small team will meet to focus on the CCWG WS2 next steps and implementation before the next Council meeting.
- PDP3.0: a webinar is scheduled for 15 September 2020. .
- IGOs: Council to discuss the timing for the issuing of the call for volunteers, and the expression of interest for the Chair of the IGO Protections work track under the Rights Protection Mechanisms (RPM) Working Group umbrella.
- DNS Abuse: GNSO Council to reach out to the ccNSO at the appropriate time to discuss possible next steps.

Action Item:

- A GNSO Council small team to deliberate on the WS2 Implementation Assessment Report, coordinate with ICANN org depts (new Planning Function being established under our CFO Xavier Calvez & MSSI), and develop a work plan for consideration by the GNSO Council; this small team is also expected to consider potential overlaps between WS2 implementation and ATRT3 & MSM evolution. The small team to convene before the September 2020 Council meeting to discuss the plan for next steps and expectations.

Item 3: Consent Agenda

There were three items on the Consent Agenda.

- 3.1 - Action Decision Radar decision - Confirm that Council supports initiation of the IDN Operational Track 1, as recommended by the IDN Scoping Team, that shall focus on the IDN Implementation Guidelines 4.0, which the Council anticipates will be worked on primarily between ICANN org and Contracted Parties, but should allow observers.
- 3.2 - Action Decision Radar decision - Agree on next steps (i.e., for the EPDP-Phase 1 IRT to prepare draft revisions to the affected policies and publish for public comment) for terminology updates as described in the "EPDP Phase 1 Recommendation 27: Registration Data Policy Impacts report" and possible actions as described in the "Possible next steps EPDP P1 Wave 1

Rec 27". In the course of making updates to impacted consensus policies, the EPDP-Phase 1 IRT is instructed to promptly advise the GNSO Council if possible policy changes are required.

- 3.3 - Approve request for extension of timeline for Issue Report on the Transfer Policy

Caitlin Tubergen, Org, in response to John McElwaine's request for further clarification on item 3.2, explained that if staff identified conflict or policy issues, amongst the minor changes, the conflicts would be sent back to the GNSO Council.

Vote results

Action Item:

- Sebastien D. to inform the EPDP-Phase 1 IRT regarding the Council agreement on the next steps for terminology updates as described in the "EPDP Phase 1 Recommendation 27: Registration Data Policy Impacts report" and possible actions as described in the "Possible next steps EPDP P1 Wave 1 Rec 27".
- GNSO support staff to inform GDD of the Council's support for initiating the IDN Operational Track 1, as recommended by the IDN Scoping Team, which shall focus on the IDN Implementation Guidelines 4.0, which the Council anticipates will be worked on primarily between ICANN org and Contracted Parties, but should allow observers.

Item 4: COUNCIL DISCUSSION - Expedited PDP (EPDP) on the Temporary Specification Phase 2: Final Report

Rafik Dammak, GNSO Council liaison and EPDP P2 Vice-Chair, presented updates to the Council.

The Final Report was delivered on the 31 July 2020. A number of groups requested additional time to submit minority statements. An updated Final Report will be sent to Council once all minority statements have been received.

The Final Report contains an executive summary, an overview of the EPDP team approach, EPDP team recommendations and annexes.

Council leadership has reviewed different options available and recommends that SSAD recommendations be considered as one package (Rec#1 - #18) and consider priority 2 recommendations as a separate package (Rec#19 - #22). This would allow alignment with EPDP Team's recommendation to consider SSAD related items as interdependent. It would also enable potential fast tracking by ICANN Board of priority 2 items which could be handed to Phase 1 IRT upon adoption. It was also highlighted that all priority 2 designations have a consensus or full consensus while SSAD recs have more mixed designations.

Proposed timeline for Council consideration highlights the first opportunity today for Council to discuss the timing of consideration of the Final Report. On the 24 August 2020, Council will receive an updated Report including the minority report. A Council webinar will be scheduled on the 3 September 2020.

Rafik Dammak clarified that all groups, except the Internet Service Providers and Connectivity Providers (ISPCP), submitted or will submit minority statements. **Keith Drazek** reminded Council that the Final Report was received at the end of July, with a view to vote on it on the 24 September 2020, allowing time for Stakeholder Groups and Constituencies (SGs and Cs) to discuss and review. He encouraged councilors to avoid deferring the vote to the October 2020 meeting. He added that councilors' main responsibility is to manage the process and to not relitigate substantive issues discussed in the EPDP 2 team.

Michele Neylon noted that Council needed to appreciate the tremendous work achieved by the EPDP P2 team as well as staff supporting the effort. He expressed disappointment about several minority statements by groups, which could be perceived as undermining the entire process due to dissatisfaction.

Pam Little, on behalf of the RrSG, concurred with Michele Neylon, and highlighted how complexe the topics worked on were. She recognised **Rafik Dammak**'s efforts as Council liaison and EPDP Vice Chair for two years, with uncomfortable time-zone constraints.

Rafik Dammak clarified that Working Group guidelines and Operating Procedures are very specific about "minority statements" and how to convey divergence. However, in the EPDP P2, this was viewed mainly as an opportunity for different groups to elaborate on specific issues and recommendations.

Item 5: COUNCIL DISCUSSION - Expedited PDP (EPDP) on the Temporary Specification Phase 2: Proposed Next Steps for Priority 2 Items

Keith Drazek reminded councilors that Priority 2 items were coined as such as not being on the critical path to the SSAD report, but that further in-depth discussions were indeed necessary
The small group's work on this topic was presented by **Rafik Dammak**. The small team addressed the topics of legal vs natural person, the feasibility of unique contacts, Whois accuracy of reporting systems. Several factors were taken into account: Ensuring efficient use of people's time and resources, due consideration given to topics whilst creating consensus, ensuring conformity with the GNSO PDP manual and Bylaws requirements and GNSO Council oversight.

Two tracks: Legal vs Natural & Feasibility of Unique Contacts (reconvene the EPDP P2 team) and Accuracy and Whois Accuracy Reporting System (new scoping team).
Open questions: when should the EPDP P2 team reconvene and how should the leadership position be determined?

James Gannon raised that not all members of the EPDP team may not wish to reconvene, and if so, maybe not as early as September 2020 in order to avoid volunteer burnout.

Marie Pattullo responded that the Business Constituency (BC) has discussed with EPDP team members who were willing to continue and that member replacements are possible so work should start before ICANN69.

Maxim Alzoba added that the work pace would not be the same as for EPDP P2.

Tatiana Tropina concurred with James, but also wanted the work to begin once the Final Report has been voted on and not before, and to allow members' respite.

Keith Drazek raised the task of searching for a Chair would start early for Council and SG/Cs but that a pause for the EPDP P2 team would be ideal.

Michele Neylon warned against "urgent" issues which have been around for years and which urgently need to be considered in the spirit of compromise.

Rafik Dammak added that Council input and feedback on next steps was crucial, and that a lot of preparatory work needed to be factored into the future timeline. For legal vs natural, deliberation dynamics needed to change, and groups which had expressed interest on the topics previously, will be asked to provide concrete proposals.

James Gannon mentioned that this is the third time Council discussed the topic and that there was no consensus yet, but a proper strategy was needed. He added that voting in between meetings, tentatively, to gauge which way Council was leaning could be helpful. Removing the timing indication could reduce dissent.

Keith Drazek noted that there had been no objection to the proposed next steps, only to the timing.

Flip Petillion said that this would be discussed shortly within the Intellectual Property Constituency (IPC).

Maxim Alzoba added that the voting date of the 24 September 2020 was indicative only, as it did not include the possibility of a motion deferral

John McElwaine mentioned that the new scoping team could be started in parallel.

Action Item:

- Prior to the September 2020 Council meeting, all GNSO Councilors to solicit input from their respective SGs/Cs regarding the Small Team proposal about the EPDP Phase 2 Priority 2 Items, and share their feedback to inform Council's decision on the next steps.

Item 6: COUNCIL DISCUSSION – Independent Review Process (IRP) Standing Panel

The GNSO Council needs to decide who will participate in the selection committee for members of the IRP Standing Panel. **Mary Wong**, Org, informed councilors that Org is still working on factors such as time requirements, scope and decision-making methodology. She added that once the selection is made by SOs and ACs, it will be forwarded to the ICANN Board.

Keith Drazek explained that the main task is to decide how to select candidates to the selection committee. One option could be the Standing Selection Committee.

James Gannon asked for further information about the SOAC leaders not wishing to use the IRP IOT existing members. He added he would not support using the SSC, but would delegate to the SGs and Cs. He would prefer it to be a collaborative process within the community as it is going to be foundational for the upcoming five to ten years.

Keith Drazek responded that the IRP IOT is already busy developing guidelines and guidance, and any further responsibility would divert from its current work. But nothing prevents IRP IOT members from volunteering.

A small Org team (with collaboration of chairs of SOs and ACs, SGs and Cs)is currently working on the terms of reference.

Action Item:

- Prior to the September 2020 Council meeting, all GNSO Councilors to solicit input from their respective SGs/Cs regarding the summary and next steps document about IRP Standing Panel, and share their feedback to inform Council's decision on the next steps.

Item 7 ANY OTHER BUSINESS:

- **7.1 - ICANN69 Planning**

Staff provided an overview of ICANN69 GNSO Schedule to date: SOAC week (13-15 October) & Plenary week (19-22 October)

- **7.2 - GNSO Chair election process/timing**

Both Houses have until 1 September 2020 to submit their GNSO Chair candidate nominations.

- **7.3 - Update on the EPDP Phase 1 IRT, in respect of Recommendation 7**

Sebastien Ducos, GNSO Council liaison to the EPDP P1 IRT provided an update regarding Recommendation 7. The team is coming to an agreement, if possible, but it will take longer than Sebastien announced in his update to the Council during the July monthly meeting. The main reason is that in terms of implementing the words of Recommendation 7, within the IRT, there was an agreement to use wording which was close to the recommendation and to include the notion of having a legal basis. Transferring data collected by registrars onto registries, the recommendation was about transferring the data provided legal basis and that legal instruments are in place. There was disagreement however regarding the definition of legal basis. Some parts of the community believed that legal basis needed to be found, other parts believed legal basis was bought by Thick Whois policy and the Bird & Bird memo on

Thick Whois. A month ago there was a disconnect with the IPT (Org) insofar as because there was a legal basis already established, the notion would be removed entirely from the recommendation. Sebastien will return to Council with a question of interpretation on the notion of legal basis which the IRT is unable to solve within.

Keith Drazek *adjourned the meeting at 23:02 UTC on Thursday 20 August 2020*