

Draft GNSO Council Agenda 19 December 2019

Please note that all documents referenced in the agenda have been gathered on a Wiki page for convenience and easier access: <https://community.icann.org/x/D5IzBw>

This agenda was established according to the [GNSO Operating Procedures](#) v3.3, updated on 30 January 2018

For convenience:

- An excerpt of the ICANN Bylaws defining the voting thresholds is provided in Appendix 1 at the end of this agenda.
- An excerpt from the Council Operating Procedures defining the absentee voting procedures is provided in Appendix 2 at the end of this agenda.

GNSO Council meeting held at 21:00 UTC

Coordinated Universal Time: 21:00 UTC: <https://tinyurl.com/w82k6rn>

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

GNSO Council Meeting Audio Cast

Listen in browser: <http://stream.icann.org:8000/stream01>

Listen in application such as iTunes: <http://stream.icann.org:8000/stream01.m3u>

Councilors should notify the GNSO Secretariat in advance if they will not be able to attend and/or need a dial out call.

Item 1: Administrative Matters (10 mins)

1.1 - Roll Call

1.2 - Updates to Statements of Interest

1.3 - Review / Amend Agenda

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 October 2019 were posted on 13 November 2019 [Minutes Part 1](#) [Part 2](#) of the GNSO Council meetings on the 06 November 2019 were posted on 26 November 2019

Item 2: Opening Remarks / Review of Projects & Action List (20 minutes)

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

Item 3: Consent Agenda (10 minutes)

- [Motion](#) to adopt the GNSO Council response to the GAC Communiqué.
- [Motion](#) for the confirmation of GNSO representative to the Empowered Community Administration

- Confirmation of Anne Aikman-Scalese as one of the GNSO appointees to the CCWG Auction Proceeds

Item 4: COUNCIL VOTE - Approval of the Supplemental Recommendation Related to the Non-Adopted EPDP Phase 1 Recommendations (recommendation #12) (15 minutes)

On 15 May, the ICANN Board [informed](#) the GNSO Council of the Board's action in relation to the GNSO's EPDP Phase 1 policy recommendations. The Board did not adopt two of the recommendations in full, where the Board has identified that portions of those recommendations are not in the best interests of the ICANN Community or ICANN and is initiating the consultation process between the Board and the GNSO Council. This concerns recommendation #1, purpose 2 and recommendation #12, deletion of data in the Organization field. As required under the ICANN Bylaws at Annex A-1, Section 6.b, a Board Statement is attached as Annex A to the letter, articulating the reasons for the Board's non-adoption of these two items. As per the Bylaw requirements (Annex A-1, Section 6.c), "the Council shall review the Board Statement for discussion with the Board as soon as feasible after the Council's receipt of the Board Statement." During the Council's Extraordinary Meeting on 28 May 2019, it reviewed the Board Statement and conducted a lengthy discussion on the best path forward.

On 30 May 2019, Keith Drazek, the GNSO Chair provided an update to the EPDP Team on the expected next steps in relation to the ICANN Board's action on Phase 1 recommendations and requested that the EPDP Team provide input to identify any questions, comments or concerns in relation to ICANN Board's action on the EPDP Phase 1 Recommendations. Subsequently, on 9 June 2019, Janis Karklins, Chair of the EPDP, informed the GNSO Chair of the following preliminary input noting that there was not sufficient time to formalize and agree on an EPDP Team response:

- “• In relation to purpose 2, there is a general understanding for why the Board decided to not adopt this purpose and the EPDP Team confirms that it considers it firmly within its scope for phase 2 to further review this purpose in the context of the System for Standardized Access / Disclosure (SSAD);
- For recommendation #12, some additional context has been provided that may help explain the thinking behind the EPDP Team's original recommendation. However, there is no agreement at this stage on whether or not the Board's non-adoption should be supported.”

During the Council's June 2019 meeting, it continued to consider the [next steps](#), taking into account a discussion with the ICANN Board at ICANN65. The reasoning and intent of the deletion part of recommendation #12 was explained to the Board, as well as the intent of purpose 2 and it was agreed that a letter should be drafted and sent to the ICANN Board as well as the EPDP Team to provide an update on the current thinking of the GNSO Council and likely next steps. The Council discussed a draft response on its 18 July 2019 meeting, subsequent discussion on the mailing list, and additional dialogue on the 22 August 2019 meeting. On 9 September 2019, the GNSO Council sent its [response](#) to the ICANN Board. On 14 October 2019, the ICANN Board provided its [response](#) to the GNSO Council's update.

On the Council's October 2019 meeting, the Council considered the Board's response and discussed next steps. The Council consulted with the EPDP Team regarding some potential ways of addressing Board's concerns (i.e., including implementation guidance), in preparation for discussions with the ICANN Board at ICANN66. At ICANN66, the GNSO Council conducted dialogue with the ICANN Board to share the proposed approach.

Here, the Council will vote to approve Supplemental Recommendation reaffirming the part of the original Recommendation #12 and the Implementation Advice.

See also Annex A-1, Section 6. Board Approval Process below for further details.

Section 6. Board Approval Processes

The Board will meet to discuss the EPDP recommendation(s) as soon as feasible, but preferably not later than the second meeting after receipt of the Recommendations Report from the Staff Manager. Board deliberation on the EPDP Recommendations contained within the Recommendations Report shall proceed as follows:

- a. Any EPDP Recommendations approved by a GNSO Supermajority Vote shall be adopted by the Board unless, by a vote of more than two-thirds (2/3) of the Board, the Board determines that such policy is not in the best interests of the ICANN community or ICANN. If the GNSO Council recommendation was approved by less than a GNSO Supermajority Vote, a majority vote of the Board will be sufficient to determine that such policy is not in the best interests of the ICANN community or ICANN.*
- b. In the event that the Board determines, in accordance with paragraph a above, that the proposed EPDP Recommendations are not in the best interests of the ICANN community or ICANN (the Corporation), the Board shall (i) articulate the reasons for its determination in a report to the Council (the "Board Statement"); and (ii) submit the Board Statement to the Council.*
- c. The Council shall review the Board Statement for discussion with the Board as soon as feasible after the Council's receipt of the Board Statement. The Board shall determine the method (e.g., by teleconference, email, or otherwise) by which the Council and Board will discuss the Board Statement.*

At the conclusion of the Council and Board discussions, the Council shall meet to affirm or modify its recommendation, and communicate that conclusion (the "Supplemental Recommendation") to the Board, including an explanation for the then-current recommendation. In the event that the Council is able to reach a GNSO Supermajority Vote on the Supplemental Recommendation, the Board shall adopt the recommendation unless more than two-thirds (2/3) of the Board determines that such guidance is not in the interests of the ICANN community or ICANN. For any Supplemental Recommendation approved by less than a GNSO Supermajority Vote, a majority vote of the Board shall be sufficient to determine that the guidance in the Supplemental Recommendation is not in the best interest of the ICANN community or ICANN.

4.1 – Presentation of motion (Council leadership)

4.2 – Council discussion

4.3 – Council vote (voting threshold: Supermajority)

Taking this action is within the GNSO's remit as outlined in ICANN's Bylaws as the GNSO 'shall be responsible for developing and recommending to the Board substantive policies relating to generic top-level domains and other responsibilities of the GNSO as set forth in these Bylaws' (Art.11.1). Furthermore, this action complies with the requirements set out in Annex A: GNSO Policy Development Process of the ICANN Bylaws.

Item 5: COUNCIL DISCUSSION – Discussion on the Addendum 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 (20 minutes)

On 18 April 2019, the Council [voted](#) to approve recommendations 1-4 of Final Report from the IGO-INGO Access to Curative Rights Protection Mechanisms PDP WG. The Council also resolved to not approve Recommendation 5 and, " directs the Review of All Rights Protection Mechanisms in All gTLDs (RPM) PDP to consider, as part of its Phase 2 work, whether an appropriate policy solution can be developed that is generally consistent with Recommendations 1, 2, 3 & 4 of the PDP Final Report and:

- accounts for the possibility that an IGO may enjoy jurisdictional immunity in certain circumstances;
- does not affect the right and ability of registrants to file judicial proceedings in a court of competent jurisdiction;
- preserves registrants' rights to judicial review of an initial UDRP or URS decision; and
- recognizes that the existence and scope of IGO jurisdictional immunity in any particular situation is a legal issue to be determined by a court of competent jurisdiction."

The GNSO Council resolved also to, "amend the charter for the RPMs PDP Working Group to reflect this new instruction accordingly." Some members of the GNSO Council met with certain members of the GAC and IGOs at ICANN65, where there appeared to be agreement from the GAC/IGOs to support the chartering of this separate work.

A small team of Councilors was convened to prepare a draft Addendum to the RPMs PDP charter, which was discussed during the Council's September 2019 meeting. After integrating Councilor feedback, the revised [Addendum](#) was shared with the GAC and IGOs for their consideration. The Council considered GAC/IGO [feedback](#) received on 1 November 2019, as well as feedback from the meeting with the GAC at ICANN66.

Taking into account GAC and IGO feedback received and balancing with the goals of the GNSO Council, leadership prepared a revised draft for GNSO Council consideration.

Here, the Council will discuss the draft revisions to the Addendum to the RPMs PDP charter, as well as additional steps that need to be taken prior to Council consideration for adoption.

5.1 – Introduction of topic (Council leadership)

5.2 – Council discussion

5.3 – Next steps

Item 6: COUNCIL UPDATE - Expedited PDP on the Temporary Specification for gTLD Registration Data - Phase 2 Work (15 minutes)

As noted in the charter for the Expedited PDP on the Temporary Specification for gTLD Registration Data, work on a System for Standardized Access to Non-Public Registration Data (SSAD) commenced after the work on a series of gating questions are complete. With the EPDP Team’s delivery of its Final Report to the GNSO Council, the work on the gating questions was considered completed and the work on the SSAD, or otherwise known as phase 2 of the EPDP, commenced. In March of 2019, the GNSO Council resolved to indicate its non-objection to the EPDP Phase 2 work beginning; the Team commenced its Phase 2 deliberations on 2 May 2019.

The Team has worked diligently in developing draft “building blocks” and policy principles that can serve as components of the SSAD. Leveraging ICANN meetings and a dedicated face-to-face meeting in September 2019, as well as remote meetings twice a week, the Team has made substantial progress towards its goal of publishing its Initial Report for public comment by mid-December of 2019. However, the EPDP Team collectively agreed to delay publication from December until a target date of 7 February 2020, noting it would prefer more time to ensure the overall quality and comprehensiveness of its draft recommendations; accordingly, the Team submitted a Project Change Request ([PCR](#)) to the GNSO Council. The EPDP Leadership presented the ramifications of delayed publication to the EPDP Team, noting, specifically, if the EPDP Team delays publication at this stage, no slack remains in the project plan to deliver a Final Report by June. In the event the EPDP Team does not meet the June deadline, any remaining resources allocated will be returned to conclude fiscal year 2020. Therefore, if the EPDP were to determine additional resources will be necessary to complete its work, the GNSO Council will be required to request more resources from the Board.

Here, the Council will receive an update on the status of the EPDP Phase 2.

6.1 – Introduction of topic (Council leadership; Rafik Dammak - Council Liaison)

6.2 – Council discussion

6.3 – Next steps

Item 7: COUNCIL DISCUSSION - GNSO Council Strategic Planning Session (15 minutes)

From 22-24 January of 2020, the GNSO Council will hold its third Strategic Planning Session (SPS), which is a result of previous GNSO Councils realizing the benefit of holding dedicated sessions to plan and prepare for the coming year of work; the primary objective of these sessions is to develop a work plan for the year ahead and beyond. However, the sessions also help the GNSO Council to better understand

its responsibilities and remit and how to more effectively perform its role. Council leadership and staff have collaborated on planning the upcoming SPS.

Here, the Council will discuss the draft agenda, expectations for Councilors, and review action items from previous SPSs.

7.1 - Introduction of topic (Council leadership)

7.2 - Council discussion

7.3 - Next steps

Item 8: ANY OTHER BUSINESS (10 minutes)

8.1 - Consideration of previous GNSO Council Additional Budget Requests (ABRs) and whether they should be pursued in the future, as well as if other ABRs should be submitted. FY20 ABRs included:

- [GNSO Council Strategic Planning Session](#) (similar ABRs submitted in FY18, FY19, and FY20)
- [PDP Leadership Travel Pilot](#) (similar ABRs submitted in FY18, FY19, and FY20)
- [Consensus Building Playbook](#) (submitted in FY20 only, as an element of PDP 3.0)

Appendix 1: GNSO Council Voting Thresholds (ICANN Bylaws, Article 11, Section 11.3(i))

See <https://www.icann.org/resources/pages/governance/bylaws-en/#article11>.

Appendix 2: GNSO Council Absentee Voting Procedures (GNSO Operating Procedures, Section 4.4)

See <https://gns0.icann.org/sites/default/files/file/field-file-attach/op-procedures-30jan18-en.pdf>

References for Coordinated Universal Time of 21:00 UTC

Local time between October and March Winter in the NORTHERN hemisphere

California, USA (PST) UTC-8 13:00
San José, Costa Rica (CST) UTC-6 15:00
New York/Washington DC, USA (EST) UTC-5 16:00
Buenos Aires, Argentina (ART) UTC-3 18:00
Rio de Janeiro, Brazil (BRST) UTC-2 20:00
London, United Kingdom (GMT) UTC+0 21:00
Kinshasa, Democratic Republic of Congo (WAT) UTC+1 22:00
Paris, France (CET) UTC+1 22:00
Islamabad, Pakistan (PKT) (+1 day) UTC+5 02:00
Singapore (SGT) (+1 day) UTC+8 05:00
Tokyo, Japan (JST) (+1 day) UTC+9 06:00
Melbourne, Australia (AEDT) (+1 day) UTC+11 08:00

DST starts/ends on Sunday 29 of March 2020, 2:00 or 3:00 local time (with exceptions) for EU countries and on Sunday 08 of March 2020 for the US.

For other places see <http://www.timeanddate.com> and <https://tinyurl.com/w82k6rn>