

## Minutes of the GNSO Council Meeting 28 May 2019

### [Agenda](#) and [Documents](#)

Coordinated Universal Time: 21:00 UTC: <https://tinyurl.com/yxwsy8v5>

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

#### **List of attendees:**

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

#### **Contracted Parties House**

Registrar Stakeholder Group: Pam Little, Michele Neylon, Darcy Southwell

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, Paul McGrady, Flip Petillion

Non-Commercial Stakeholder Group (NCSG): Martin Silva Valent, Elsa Saade, Tatiana Tropina, Rafik Dammak, Ayden Férdeline (apologies), Arsène Tungali

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

#### **ICANN Staff**

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

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 (apologies sent)

Ariel Liang – Policy Support Specialist

Caitlin Tubergen – Policy Senior Manager

Nathalie Peregrine – Manager, Operations

Terri Agnew - Operations Support - GNSO Lead Administrator

Sara Caplis – Technical Support

[MP3 Recording](#)

[Transcript](#)

#### **Item 1. Administrative Matters**

1.1 - Roll Call.

1.2 - Updates to Statements of Interest

1.3 - Review / Amend Agenda

**Keith Drazek** reviewed the agenda which 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 18th April were posted on the 4th May 2019

[Minutes](#) of the GNSO Council meeting on the 16th May were be posted on the 31st May 2019

## **Item 2: COUNCIL DISCUSSION - Expedited PDP on the Temporary Specification Phase 1**

**Keith Drazek** reminded councilors that on 15 May 2019, the ICANN Board informed the GNSO Council of the Board's action in relation to the GNSO's Expedited Policy Development Process (EPDP) on the Temporary Specification (Temp Spec) for gTLD Registration Data policy recommendations. ICANN Board accepted in full 27 out of the 29 recommendations and the remaining 2 in portion and sent them back to the GNSO Council along with a rationale for rejection. This has triggered a bylaw-mandated Board and Council consultation process. The Council should engage the EPDP team and be prepared to work on re-engaging with the Board. This is uncharted territory but provided for in the Bylaws.

Councilors then discussed next steps. Highlights of the discussion were as follows:

- The Bylaws allow for a flexible timeline regarding the consultation period, but provide no strict deadline. A face-to-face discussion between the Board and the GNSO Council will be possible at ICANN65 in Marrakech to gain further information as a start.
- The GNSO Board consultation will not hinder EPDP Phase 2 progress but the GNSO Council needs to decide how to approach the 2 recommendations which were partially rejected by the Board and how to provide guidance when needed to the EPDP team. This follow up work should not impact the EPDP Phase 2 efforts overall.
- Several councilors shared their concerns about ICANN Board using extraordinary measures regularly (Temp Spec, Technical Study Group) and whether a unified response to future similar Board actions would have a positive or negative impact.
- The question of the role of the Board liaison to the EPDP team was raised.
- Councilors were reminded that the Temporary Specification (Temp Spec) has expired
- Possible next steps would involve accepting the Board's non adoption, or affirming the original recommendation, or modifying the original recommendation. For this last option, engaging the EPDP team for a potential supplemental recommendation and sharing the Board's rationale for non-adoption could be a first step. Work on a rough timeline would assist in getting the follow up work started.
- The question was asked whether the upcoming task could have been made easier had the Board rejected a recommendation entirely rather than by portions.
- The discussion between ICANN Board and European Data Protection Authorities (DPAs) must continue and any information deemed useful for the Council would need to be shared as early as possible. The EPDP team however remains the main area for the community to provide input.
- Councilors need to be mindful of precedence being set and procedures being followed correctly as per ICANN Bylaws.
- It will be important for the Council to provide questions, comments, raise concerns and incorporate feedback from the EPDP team in preparation for the discussion with the Board. In addition to this, understanding further why the Board rejected this recommendations will be key to determining the GNSO Council's potential response to the Board rejection.
- **Keith Drazek** will join a meeting of the EPDP team to provide an update and have an initial point of engagement between the GNSO Council and the EPDP team in addition to the GNSO Council liaison, Rafik Dammak.

**Keith Drazek** summarised that the Council needs an action plan in collaboration with the EPDP team, to move forward on the topic with sufficient information both from ICANN Board and the EPDP team.

**Action item:**

- Staff to circulate thresholds of Board voting on the recommendations
- *Council leadership* to prepare an action plan for engaging with the Board. This includes documenting the options available to the Council, collecting questions/comments/concerns from Stakeholder Groups/Constituencies and the EPDP Team, timeline for engagement with the EPDP Team, and timeline for engagement with the Board.

**Item 3: COUNCIL DISCUSSION – IGO-INGO Access to Curative Rights Protection Mechanisms**

**Keith Drazek** reminded the GNSO Council that on 18 April 2019, the Council **resolved** to approve recommendations 1-4 of the Final Report and refer recommendation 5 to be considered by the RPMs PDP as part of its Phase 2 work with a small team under the auspices of a revised charter. On 23 May 2019, the GAC sent a **letter** to the GNSO Council, noting that approving recommendations 1-4 and referring recommendation 5 to the RPMs PDP is contrary to longstanding GAC Advice. The GAC wishes to discuss recommendations 1-4 with the GNSO Council and the ICANN Board in the format of a facilitated dialogue.

During previous discussions with the GAC, GNSO Council leadership clarified that recommendations 1-4 are now pending ICANN Board's action, and that further discussion would ideally focus on recommendation 5.

During the ensuing discussion, the following points were made:

- Several councilors looked forward to the discussions in Marrakech to further clarify what the options and solutions were. An exchange over a discussion was the preferred format over a "facilitated discussion". It was necessary to better understand what the GAC's preferred outcome would be.
- Councilors raised concerns that the GAC wanted to discuss substance over process, with a possible overlap with the PDP WG's authority. The GNSO Council is manager of the PDP process only.
- GNSO Council intent should be focussing on recommendation 5, re-chartering of the RPM PDP WG, and IGO and GAC involvement within a PDP3.0 construct. Several councilors volunteered to be part of a small drafting team for this effort.
- GAC had requested a facilitated dialogue prior to the GNSO Council vote, but the GNSO Council privileged procedure at the time. Currently, a discussion is preferred.
- Staff will provide any background material the GNSO Council needs to advance the effort.
- If the Board were to reject recommendations 1-4, it would impact the proposed new RPM subteam, but not the RPM Phase 2 work overall. But holding off, for some councilors, the RPM subteam work to await Board approval or rejection of recommendations 1-4 could make sense.
- Several councilors volunteered to be part of the small team who would engage in discussions with the GAC and the ICANN Board with a solution-oriented aim. This was preferred by several councilors to the facilitated dialogue proposed by the GAC which would not allow to go into any depth if participation numbers on both the GAC and the GNSO side were too high.

**Keith Drazek** summarised that the GNSO Council was happy to engage with the GAC and the ICANN Board, after responding to the GAC letter re-confirming the Council view that ICANN Board is responsible with dealing with rec 1-4. GNSO Council is moving ahead with recommendation 5 on IGO protections with the RPM subgroup. In addition to this a formal facilitated dialogue is premature for Marrakech, but a discussion to which Board members would be invited would be a satisfying compromise. Keith Drazek encouraged councilors to be sensitive to promoting the multistakeholder model as a means to resolve issues such as this one.

Action items:

- *Keith Drazek* to prepare draft response to the GAC and circulate to the Council list. Upon agreement from the Council, *Staff* to facilitate sending the finalised response to the GAC prior to the close of business on 31 May 2019.
- *Council leadership* to include discussion of recommendations 1-4 into agenda for meeting with the Board at ICANN65.

**Keith Drazek** adjourned the GNSO Council meeting on Tuesday 28 May 2019 at 22:34 UTC.