

Minutes of the GNSO Council Meeting 17 December 2020

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

Coordinated Universal Time: 12:00 UTC: <https://tinyurl.com/y3f7xoof>

04:00 Los Angeles; 07:00 Washington; 12:00 London; 13:00 Paris; 15:00 Moscow; 23:00 Melbourne

List of attendees:

Nominating Committee Appointee (NCA): Non-Voting – Olga Cavalli

Contracted Parties House

Registrar Stakeholder Group: Pam Little, Kristian Ørmen, Greg DiBiase

gTLD Registries Stakeholder Group: Maxim Alzoba, Kurt Pritz, Sebastien Ducos

Nominating Committee Appointee (NCA): Tom Dale

Non-Contracted Parties House

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

Non-Commercial Stakeholder Group (NCSG): Juan Manuel Rojas, Stephanie Perrin, Tatiana Tropina, Wisdom Donkor, Farell Folly, Tomslin Samme-Nlar

Nominating Committee Appointee (NCA): Carlton Samuels

GNSO Council Liaisons/Observers :

Cheryl Langdon-Orr– ALAC Liaison

Jeffrey Neuman– GNSO liaison to the GAC

Maarten Simon – ccNSO observer

ICANN Staff

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

Mary Wong – Vice President, Strategic Community Operations, Planning and Engagement

Julie Hedlund – Policy Director

Steve Chan – Senior Director

Berry Cobb – Policy Consultant

Emily Barabas – Policy Manager

Ariel Liang – Policy Senior Specialist

Caitlin Tubergen – Policy Director

Terri Agnew - Operations Support, Lead Administrator

Nathalie Peregrine – Manager, Operations GNSO

[Zoom Recording](#)

[Transcript](#)

Item 1: Administrative Matters

1.1 - Roll Call

Philippe Fouquart welcomed all to the GNSO Council meeting.

1.2 - Updates to Statements of Interest.

Maxim Alzoba informed the Council that he was standing in for Criag Schwartz in the GNSO Standing Selection Committee (SSC) until early 2021.

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 GNSO Council meetings [part 1](#) and [part 2](#) on the 21 October 2020 were posted on 6 November 2020.

[Minutes](#) of the GNSO Council meeting on 19 November 2020 were posted on 3 December 2020.

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

2.1 - The review of the [Projects List](#) and [Action Item List](#)

Berry Cobb, GNSO Policy Consultant, provided the latest updates to the [Action Decision Radar](#) (ADR) , the [Action items](#) and the [Project List](#) to Council:

- Transfer policy issue report is due in near time, in January the Council may consider launching the PDP for the transfer policy review
- IDN Charter DT have met already in December, work is progressing toward launching the EPDP
- There are Chair appointments for EPDP Phase 2A and IGO Work track
- GNSO Standing Committee on Budget and Operations (SCBO): They completed their Council comments submitting about the draft PTI and IANA FY22 budgets and operating plan. New Public Comment to open shortly and the SCBO is expected to review the materials.
- IRP IOT was listed as a project but has been removed as is not of Council's purview, further updates will be handled by the SSC and the Action item list.
- The New gTLD Subsequent Procedures (SubPro) PDP Working Group Final Report will be delivered later than anticipated.
- Wave 1.5 report is also expected from PPSAI and Translation and Transliteration IRTs.

Item 3: Consent Agenda

There were five items on the Consent Agenda.

3.1 - Approval of SSC Leadership for 2020-2021: Carlton Samuels, Chair and Sophie Hey, Vice-Chair

3.2 - Approval of Heather Forrest to serve an additional term as GNSO nominated member of the Fellowship Selection Committee

3.3 - Approval of Keith Drazek to serve as EPDP 2A Chair

3.4 - Approval of Chris Disspain to serve as IGO Curative Rights Work Track Chair

3.5 - Confirmation of Council liaisons to respective efforts:

- All Rights Protection Mechanisms in All gTLDs / IGO Curative Rights Work Track - John McElwaine
- New gTLD Subsequent Procedures - Flip Petillion
- EPDP Phase 2 - Olga Cavalli
- EPDP Phase 2A - TBD
- Standing Committee on Budget & Operations (SCBO) - Philippe Fouquart (ex officio)
- Standing Selection Committee (SSC) - Tatiana Tropina (ex officio)
- IRT: EPDP Phase 1 - Sebastien Ducos
- IRT: Privacy & Proxy Services Accreditation Issues PDP Recommendations (PPSAI) IRT - TBD (paused)
- IRT: Translation and Transliteration of Contact Information (T/T) - Maxim Alzoba (paused)
- GNSO Council liaison to the ccNSO - Sebastien Ducos
- GNSO Council liaison to the GAC - Jeff Neuman (*already approved but included for completeness*)

Councilors voted unanimously in support of the motion.

Vote results

Action Items:

- Staff to inform Fellowship Selection Committee of GNSO Council's approval of Heather Forrest as the GNSO nominated member for an additional term.
- Staff to send a call for volunteers for the EPDP Phase 2A Liaison position, with the aim to fill the position by the 21 January 2021 Council meeting. (EPDP Phase 2 liaison position is not needed)

Item 4: COUNCIL VOTE - Affirm of intent of EPDP Phase 1 Recommendation 7 (EPDP 1 Rec 7)

Philippe Fouquart reminded Council that there has been significant work on this topic, but no common ground has been found within the IRT, Council was asked by the Board to further work on the topic, the result of which was presented today.

Pam Little, prior to presenting the [motion](#), explained the rationale to Council ([slide deck](#)). The motion requires Rec 7 be implemented as written and intended, the Thick Whois Transition Policy was modified and if there is a conflict, Rec 7 prevails. She reminded the Council that this was an unprecedented occurrence. The difference between Rec 7 and Thick Whois Policy is that for Rec 7, transfer of registrant contact information is optional, whereas for the Thick Whois Policy, the transfer of registrant contact info from registrar to registry operations is mandatory.

Pam Little then provided further rationale to councilors. She highlighted the Board's request for Council to further clarify the intent of Rec 7, a request which ought to have happened at an earlier stage of the policy development process but in this case, after ICANN Board adoption of the recommendation. The EPDP mapped out purpose and processing activities, specifically purpose 1B - PA2 which suggests that Rec 7 intends the registry operator in question to determine whether they have a legitimate legal basis to require the data from the registrar. The role of the ICANN Board once recommendations are adopted is to give instructions to ICANN staff to implement policy recommendations. The GNSO Council within the consensus policy implementation framework, serves as a resource for staff about the background or intent of the policy recommendations. The Implementation review team (IRT) ensures the implementation conforms to the intent of policy recommendations and is not a forum for revisiting policy discussions. The GNSO Operating Procedures, Annex 2 article 16 also mentions that approved GNSO Council policies that have been adopted by the ICANN Board and have been implemented by ICANN staff may only be amended by the initiation of a new PDP on the issue and the EPDP is deemed satisfied for the purpose of amending the Thick Whois Transition Policy.

Marie Pattullo, from Business Constituency (BC) thanked Pam for the overview. On behalf of the BC, she requested a deferral due to the NIS 2 issued by the European Commission (<https://ec.europa.eu/digital-single-market/en/news/proposal-directive-measures-high-common-level-cybersecurity-across-union>). If the directive passes, it will provide the legal basis for Thick Whois, specifically article 23. She also raised that a deferral would not necessarily hold the IRT work back, and in the light of the directive, further time was needed.

John McElwaine supported the BC's request due to the EC announcement which has bearing on this topic. He also has been working on amendments and agrees more work can be done. This is an important procedural issue to get right as it is a PDP reversing an act of consensus policy.

Philippe Fouquart asked councilors to appreciate the time spent working on the issue, in regards to a deferral, and that there have been several attempts to solve it, all have failed. Would there be some degree of freedom and additional time to work further on this?

Tatiana Tropina asked for further clarification on the deferral request motivation. The EC directive impacts the registrars and registries, but the last NIS directive took 3 years to negotiate, and there will be disagreement on several points.

Maxim Alzoba underlined that the NIS is at a draft-level, and thus should not delay policy development. It should be tracked, but not used as rationale for a deferral.

Kristian Ormen suggested that the directive wouldn't necessarily impact rec 7.

John McElwaine replied that the reason why Rec 7 overturns Thick Whois Consensus Policy is because it makes it optional for data elements to be transferred and no longer mandatory.

Jeffrey Neuman asked about John's mention of late changes to the motion. But there were no such late changes on the Council mailing list.

Pam Little clarified that the late changes refer to a previous draft of the motion within the small team, prior to the current motion submitted, however both versions were very similar. The one difference was the earlier version had the council initiating an EPDP on Thick Whois policy, the current motion does not, given the recent discussion with ICANN Board, which signalled if clarification of intent is done, there will be no need to initiate an EPDP process. John's amendments have not been shared with Council. The Contracted Party House (CPH) looked into them and didn't think they would provide any further clarification, there was not enough time to look into them closely as they were submitted late.

John McElwaine agreed with Pam Little, adding that the main concern, highlighted by the EC announcement, was that the transfer of data elements from registrar to registry is going to be looked at and ought not to be made optional, as by doing that it would render Thick Whois void. He added that Pam and him collaborated in the small team with the aim of harmonising Rec 7 with Thick Whois. The way the motion is currently drafted, it doesn't necessarily manage that, and another period of time would be worthwhile to attempt that.

Philippe Fouquart asked if councilors were ready to take a vote on the issue.

Kurt Pritz said that a deferral to arrive at a stronger agreement across Council on Rec 7 being implemented as written, with a strong direction for IRT, is reasonable. Basing a deferral on the NIS proposal would not be acceptable. A deferral would however affect the work of the IRT.

Pam Little, seconded by **John McElwaine**, submitted the [motion](#) for the GNSO Council to affirm the intent of EPDP Phase 1 Recommendation 7.

Philippe Fouquart reminded the council that a deferral is at a chair's discretion but encouraged others to speak up. His personal preference would be not to defer. He also raised that from the ISPCP perspective, there were questions about whether 30 additional days would make a difference to the work.

Maxim Alzoba proposed to second the motion if John McElwaine wished to withdraw his second.

Pam Little raised that given the requests from the BC and IPC to defer, and the knowledge that it is common practice to grant deferral, the aim ought to be to have a motion that will have as much of a Council full support as possible.

Tatiana Tropina asked if the small team would succeed in working towards reaching a conclusion. She added that voting on several amendments during the current Council meeting would be too time-consuming.

Stephanie Perrin added that at any given moment Congress could receive a draft bill which would impact the draft on Rec 7. This cannot be a delay caused by a draft law especially as nothing in the motion has been highlighted as conflicting with what is proposed in the motion.

Philippe Fouquart confirmed the deferral wouldn't be based on the directive, but on the need for additional time to work on a motion acceptable to all.

Maxim Alzoba asked if the small team can work on this before the January meeting, given the small team does not appear to have common reading of the work.

Philippe Fouquart suggested that the small team work further on the topic with the caveat that the intent of Rec 7 is maintained. Even if the motion remains the same for the January meeting, there will be a Council vote.

The motion was deferred.

Action Item:

- GNSO Council small team on EPDP Phase 1 Rec 7 to reconvene and further consider an improved approach and propose updated motion for the January 2021 Council meeting as a vote item, with the caveat that the intent of Rec 7 be maintained. Staff to send out a doodle poll to schedule a placeholder meeting (preferably before 11 Jan 2021) for the small team.

Item 5: COUNCIL DISCUSSION - Update on Ongoing GNSO Policy Development Processes

John McElwaine, GNSO Council Liaison to the RPM WG, presented the Final Report delivered to Council on November 24th 2020. The full side deck can be found [here](#). John thanked the co-chairs as 34 of the 35 recommendations achieved full consensus. He also thanked staff for summarizing discussions into the report. Several recommendations maintain status quo: TMCH (trademark Clearinghouse), Sunrise and Trademark Claims. Other recommendations suggested modifying operation practices, within the URS and for other rights protection mechanisms. There were also suggestions for overarching data collection in addition to minority statements. Next steps are GNSO Council consideration of the Final Report and sending the recommendations report to the ICANN Board.

Item 6: COUNCIL DISCUSSION -Update from Council small team on GNSO next step to implement WS2 recommendations,

In the interest of time this item was postponed.

Action Item:

- Staff to place this item on the GNSO Council January 2021 meeting agenda (discussion deferred)

Item 7: ANY OTHER BUSINESS

7.1 - Notification of SG/C and Council discussion and agreement on process to appoint GNSO members for the Community Representatives Group to select IRP Standing Panel (i.e., assign to SSC and provide the SSC with briefing document to help guide their selection process) (GNSO Chair - Philippe Fouquart)

Philippe Fouquart updated councilors on the latest developments on the agreement on the process to appoint GNSO members for the Community Representatives Group to select the IRP Standing Panel. The Standing Selection Committee (SSC) needs to receive the GNSO Briefing paper before the end of the week after review by the SG/C Chairs. There may be an extension possible for the Expressions of Interest.

Maxim Alzoba raised the issue of lack of volunteers.

7.2 - Update from SO/AC leadership roundtable (GNSO Chair - Philippe Fouquart)

Philippe Fouquart highlighted the following points:

- Main focus was ICANN70 and results of the meetings survey.
- Discussion on how to apply feedback to the new meeting format.
- Summary paper was provided to SO/AC leaders and forwarded to SG/C leaders who are collaborating with Council leadership on a response.

7.3 - Update on SubPro PDP WG Final Report delivery (Council leadership & Flip Petillion)

Flip Petillion, Council liaison to SubPro, reminded councilors that the Final Plan was to be submitted to Council on the 23rd of December 2020. Co-chairs and staff have held countless meetings over the last few months. He [shared](#) on the Council mailing list the new updated Final Report delivery plan, which would aim for the January 2021 GNSO Council meeting with a vote during the February 2021 GNSO Council meeting.

Tomslin Samme-Nlar asked why a formal Project Change Request (PCR) wasn't submitted.

Jeffrey Neuman responded that there was every intention of finishing the report on the 23rd December 2020, but in the last couple of weeks, Working Group members asked for more time for the consensus designations and minority reports. The PCR request would have been after the document deadline, so would have been submitted before the January deadline, when the Final Report would have been finished.

Maxim Alzoba reminded the Council that under the previous Chair, it had been decided that no further PCR should be granted to the SubPro working group. Whereas here for a few weeks' delay, it would seem insignificant to submit a PCR, from a project management perspective, it is poor time planning. The GNSO Council is the manager of the process, not the PDP co-chairs.

Flip Petillion replied that the email he sent around was to inform Council of the delay which is a very small time frame.

Kurt Pritz added that the Working Group was extremely active in aiming for the finishing line. The GNSO Council should not be in the process of accommodating small changes to the PDP schedule.

Philippe Fouquart agreed with the points raised but emphasized the importance of allowing the WG to finish work in a timely manner.

7.4 - Next steps for the letter from the Board regarding EPDP Phase 1, Recommendation 12

In the interest of time, this item was postponed.

7.5 - GNSO Council Additional Budget Requests (due 29 January 2021)

In the interest of time, this item was postponed.

Action Item:

- Staff to circulate an email to the GNSO Council, providing context about previous Council Additional Budget Requests and seeking input for potential requests for the next fiscal year.
- GNSO Council leadership to send a call for volunteers message to form a Council small team (likely composed of CPH Councilors) to prepare a draft response to the Board letter regarding EPDP Phase 1 Rec 12.

Philippe Fouquart adjourned the meeting at 14:06 UTC on Thursday 17 December 2020