Minutes of the GNSO Council Meeting 23 September 2021

Agenda and Documents

Coordinated Universal Time: 19:00 UTC: https://tinyurl.com/3u3fjdff

12:00 Los Angeles; 15:00 Washington; 20:00 London; 21:00 Paris; 22:00 Moscow; (Friday) 05:00 Melbourne

List of attendees:
Nominating Committee Appointee (NCA): **– Non-Voting** – Olga Cavalli
Contracted Parties House
Registrar Stakeholder Group: Pam Little, Greg Dibiase, Kristian Ørmen
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 (apology, proxy to Tomslin Samme-Nlar), Wisdom Donkor, Tomslin Samme-Nlar, Farell Folly
Nominating Committee Appointee (NCA): Carlton Samuels
GNSO Council Liaisons/Observers :
Cheryl Langdon-Orr– ALAC Liaison
Jeff Neuman– GNSO liaison to the GAC
Maarten Simon – ccNSO observer

Guests:
Keith Drazek, EPDP Phase 2A Chair
Antonietta Mangiacotti, ICANN Org

ICANN Staff
David Olive -Senior Vice President, Policy Development Support and Managing Manager, ICANN Regional
Marika Konings – Vice President, Policy Development Support
Mary Wong – Vice President, Strategic Community Operations, Planning and Engagement
Julie Hedlund – Policy Director
Steve Chan – Senior Director
Berry Cobb – Policy Consultant
Emily Barabas – Senior Manager, Policy Development Support
Ariel Liang – Policy Senior Specialist (apologies)
Caitlin Tubergen – Policy Director
Nathalie Peregrine – Manager, Operations Support
Terri Agnew - Operations Support - GNSO Lead Administrator
Julie Bisland – GNSO SO/AC Support

Zoom Recording

Transcript

Item 1: Administrative Matters

1.1 - Roll Call

Philippe Fouquart, GNSO Chair, welcomed all to the September 2021 Council meeting.

1.2 - Updates to Statements of Interest.

There were no updates to the Statements of Interest.

1.3 - Review / Amend Agenda

The agenda 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 22 July 2021 were posted on 06 August 2021.

Minutes of the GNSO Council meeting on 19 August 2021 were posted on 04 September 2021.

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.

Berry Cobb, GNSO Policy Consultant, presented the more recent updates of the Portfolio Management Tool, the Action Decision Radar and the Project List.

Berry Cobb, GNSO Policy Consultant gave a heads up on the range of work approaching Council in the next few months:
- The EPDP on IGO Curative Rights Protections launched their Public Comment on the Initial Report to close in September. The Final Report is still expected to be delivered before the end of the year.
- EPDP Phase 2A: the Final Report will be considered by Council during its October meeting
- EPDP Phase 2: Janis Karklins sent an update to Council. There is a webinar on SSAD ODP taking place shortly this week.
- Whois Procedure for privacy laws: a letter was sent by Theresa Swinehard from the GDS team providing an update to Council.
- RPMs Phase 2: Presentation on today's agenda from GDS on Policy Status ~Report (PSR)
- SCBO Launch of Public Comment on FY22 Operating and Budget plan, closing on 25 October 2021. The SCBO will be preparing comments on behalf of the GNSO Council.
- EPDP on IDNs: change of Chair and submitting their project plan for the October meeting.

After the Annual General Meeting (AGM) several tools from the portfolio will be re-set for the new Council.

Pam Little, GNSO Council Vice Chair: On EPDP on IGOs, the Initial Report does not seem to have been sent to Council. Is Council expected to weigh in on the scope issue? Given the Public Comment will end before the next Council meeting, it would be good to have clarity.

Berry Cobb, GNSO Policy Consultant, responded that there was no action for Council to consider at this time.

Philippe Fouquart, GNSO Chair, added that these documents were shared by councilors regularly with their community members.

Item 3: Consent Agenda

- 3.1 - Approval of the Chair for the Accuracy Scoping Team - Michael Palage (SOI)

Action item: The GNSO Secretariat to notify Michael Palage that the GNSO Council has approved his appointment as Chair of the Accuracy Scoping Team

- 3.2 - Approval of the updated role description for the GNSO liaison to the GAC

Action item: The GNSO Secretariat, on behalf of the Chair of the GNSO Council, to notify the Chair of the GAC of the GNSO Council's approval of the updated role description for the GNSO liaison to the GAC

- 3.3 - Confirmation to appoint Donna Austin as the chair of the EPDP on Internationalized Domain Names (IDNs)

Action item: Action Item: The GNSO Secretariat to notify Donna Austin that the GNSO Council has approved her appointment as the Chair of the EPDP on Internationalised Domain Names.

- 3.4 - Approval of the 2021 Customer Standing Committee (CSC) Slate - In accordance with Section 17.2 (d) of the ICANN Bylaw and per the CSC Charter, the full membership of the CSC must be approved by the GNSO Council. The Council approves the full slate of members and liaisons:

Members:

Frederico Neves, member re-appointed

Appointing Organization: ccNSO

Term: 2021 – 2023

Brett Carr (Vice-Chair) member

Appointing Organization: ccNSO

Expected Term: 2020 - 2022

Dmitry Burkov, member re-appointed

Appointing Organization: RySG

Term: 2021 - 2023

Gaurav Vedi, member

Appointing Organization: RySG

Expected Term: 2020 - 2022

Liaisons:

Holly Raiche, liaison re-appointed

Appointing Organization: ALAC

Term: 2021 - 2023

Milton Mueller, liaison re-appointed

Appointing Organization: GNSO (Non-Registry)

Term: 2021 – 2023

Lars-Johan Liman, (Chair)

Appointing Organization: RSSAC

Expected Term: 2020 – 2022

Laxmi Prasad Yadav

Appointing Organization: GAC

Expected Term: 2020 - 2022

Amy Creamer

Appointing Organization: PTI

Term: no term limit

SSAC has declined to appoint a liaison as of the 01 October 2021 slate.

Action Item**:** The GNSO Secretariat, on behalf of the Chair of the GNSO Council, to notify the Chair of the Customer Standing Committee (CSC) and the Chair of the ccNSO of the approval by the GNSO Council of the CSC's full slate of members and liaisons.

Kurt Pritz, RySG councilor, pointed out his personal relationship with Donna Austin, and mentioned that he was voting as directed by the RySG.

The GNSO Council voted unanimously in support of the Consent Agenda item.

Item 4: COUNCIL DISCUSSION - EPDP Phase 2A Final Report

Philippe Fouquart, GNSO Council Liaison to the EPDP P2A, [presented](#) on the [Final Report](#) as well as the [draft motion](#).

There were two topics from phase 1 and 2 for further review by the EPDP Phase 2A team: differentiation between Legal and Natural Person Data and then the feasibility of unique contacts to have a uniform anonymised email address. The Initial Report was published mid-July 2021. Following the review of public comments, there was an extended mediation period held over the summer to facilitate mutual understanding on various viewpoints. The Final Report was delivered on 3 September, updated with minority statements on 10 September. The Final Report has four recommendations, responses to Council questions and one proposal directed at Council.

The EPDP P2A Chair insisted that the recommendations must be considered in light of the associated minority statements included in the Final Report.

On Legal vs Natural i., the EPDP P2 team could not reach consensus on recommending changes to the EPDP P1 recommendation 17 but recommended that Council monitor the development of various regulatory evolutions (NIS2, but not limited to)

On recommendation 1, the EPDP team recommends that several fields be created to facilitate differentiation between legal and natural person registration data. These may be used by contracted parties and the SSAD, consistently with Phase 2 recommendations, must support the field.

On Legal vs Natural ii.,recommendations 2 and 3, contracted parties choosing to differentiate should follow guidance as stated in the Final Report, in line with GDPR, the guidance should be considered for any future monitoring work,

Feasibility of Unique Contacts: The team recognized that whilst it may be feasible to have registrant based email contact or registration based email contact, several members expressed concerns which prevented the team from making further recommendations. The team did note that other participants identified benefits of having those email contacts for contactability purposes. The team recommended that the contracted parties who would choose to publish a pseudonymized registrar based or registration-based email address should evaluate the legal guidance obtained by the EPDP team on this topic.

The [draft motion](#) was circulated on the Council mailing list, now councilors need to consider through the reports, presentations and feedback received from representatives on the EPDP team, whether more discussion is needed. If so, there is time before the next Council meeting. As with all EPDP recommendations, a GNSO Supermajority will be necessary to adopt these recommendations.

Keith Drazek, EPDP Phase 2A Chair, thanked Philippe for his efforts as GNSO Council Liaison, as well as staff for their support to the group. The group was challenging, with differences of opinion from the outset. The Final Report recommendations are the compromise they were able to reach. This is the most which could be achieved by the group. He thanked Brian Beckham as vice chair, as well as the group members.

John McElwaine, Intellectual Property Constituency (IPC) asked for Keith or Philippe's perspective on recommendation 17 item 3 in Phase 1 Final Report that the EPDP team in Phase 2 was to resolve the legal vs natural issue. However, in the Phase 2A Final Report, there is an optional approach to be developed over time in keeping with the GDPR code of conduct.

Keith Drazek, EPDP Phase 2A Chair, responded that the term "resolved" led to extensive discussion in the Phase 2A team about what the term meant. There was no consensus on the meaning of the term, therefore the recommendation is "optional".

Kurt Pritz, RySG councilor, asked as a prerequisite that Council consider the request in the RySG minority statement in regards to recommendation 1. The request seeks GNSO Council's determination of whether the proposal contained in recommendation 1, the creation of a mandatory data field, is out of scope with the GNSO instructions to the EPDP. He suggested Council looks into this as a preliminary to reviewing the Final Report. He acknowledged Keith Drazek's decision, at the time of the scope discussion within the EPDP Phase 2A team, to defer the final decision on scope to the GNSO Council. Kurt reminded councilors that the Council had instructed the EPDP team to answer narrow questions, the first being whether any updates were required to the EPDP Phase 1 recommendations. The RySG minority statement raises recommendation 17, where registries and registrars are permitted to differentiate between registrations but are not obligated to do so. The Final Report states that there was no consensus to change this. Kurt also raised that the mandatory creation of a new data element has no nexus with the EPDP Phase 1 recommendation of the permissive but not mandatory differentiation, it therefore isn't justified as a response to the first part tasked by the GNSO Council He also asked what guidance, if any, can be offered to registrars or registries who differentiate between legal and natural persons. The mandatory creation of a data element is not related to providing guidance for parties. The creation of a data element is an implementation detail which merely focuses on outcome. By including the new data element under guidance, the guidance doesn't necessarily work. The RySG requests that Council consider redacting recommendation 1 as out of scope before initiating a vote on the Final Report.

Marie Pattullo, Business Constituency (BC), thanked all those involved in the EPDP effort. She added that in light of the voting schedule, she hoped that there would be a vote per recommendation and not in one single block.

Philippe Fouquart, GNSO Chair, responded that the draft motion has been circulated and that different votes had been considered on Final Reports, but it needs further discussion as a side effect is of cherry picking recommendations and fragmenting the overall consistency of the Final Report.

Maxim Alzoba, RySG, asked if the motion was passed without the consideration of recommendation 1 being in scope, what is to be expected, a correction to the motion or not?

Philippe Fouquart, GNSO Chair, responded that if there is no consensus within Council about whether it is in scope or not, it may be worth separating out recommendation 1 and letting Council decide to amend or not the motion.

Keith Drazek, EPDP Phase 2A Chair, noted that the Final Report was created in a spirit of compromise. The question of scope was raised during the group's work, and that was part of a conversation about scope overall, for which compromise was reached. There is a delicate balance here in getting to this step forward, it opens the door for further work down the road as needed. He advised against splitting the recommendations.

Philippe Fouquart, GNSO Chair, admitted he was reluctant to separate out of recommendation.

Maxim Alzoba, RySG, noted that the SubPro Final Report recommendations had been separated. If the issue is with scope, the recommendations should not be made into consensus policy. The GNSO Council must decide this, not the EPDP team.

Kurt Pritz, RySG, agreed with Keith on the delicate balance and the fact recommendations are interrelated therefore justifying voting on the report as a whole. But the out of scope was raised during the August 5 2021 EPDP Phase 2A meeting. The Chair ruled it was in scope but that the GNSO Council was to decide upon the scope issue. At the time, the RySG stepped down on the matter. It ought to be Council's responsibility to discuss this further.

Marie Pattullo, BC, stated that the GNSO Council gave a charter to the team who worked hard to produce Final Report. As Council are we rejecting the work of the team by questioning the entire work which was based on the scope of the charter?

Philippe Fouquart, GNSO Chair, agreed and added that there was to be a review of scope as a possibility.

Maxim Alzoba, RySG, added that the Chair of the EPDP Phase 2A team made the determination that Council would consider scope. If the work delivered is not in scope, the Council must consider this.

Philippe Fouquart, GNSO Chair, concluded that this discussion must take place on the Council mailing list.

Carlton Samuels, NomCom Appointee, asked for the question which Council must consider to be clearly stated.

Philippe Fouquart, GNSO Chair, summarised the question pertaining to Recommendation 1: During the work on the data field standardized by the relevant standards development organisations, the question was raised as to whether to assign a "must" and a "may" for contracted parties to differentiate on that basis, was in scope of the charter. Keith indicated during the discussion that it was in scope but if it was decided during the discussion at Council level that it was out of scope, the Council would decide.

Keith Drazek, EPDP Phase 2A Chair, added that there was no formal request from the WG to the Chair nor the Liaison to take this to Council midstream. Consensus was reached on the language.

Pam Little, GNSO Vice Chair, asked to consider how Council is going to look at recommendation 1, the charter, the proposal from the EPDP P2A team and determine whether recommendation 1 is in or out of scope. The timing is very tight.

Action Items:

- GNSO Council leadership to consider the question raised by RySG of whether Recommendation 1 is in scope and whether and how the Council should make a determination on this question.

Item 5: COUNCIL DISCUSSION - GDS Update on the Framework for the Policy Status Report Framework on the UDRP

Philippe Fouquart, GNSO Chair, provided background information on the topic, and handed over to **Antonietta Mangiacotti, ICANN Org,** to present the latest updates.

Council approved the RPM Phase 1 report in January and in July reviewed the next steps for UDRP, and the charter before Phase 2. The framework for this proposal was shared on the list in September.

Antonietta Mangiacotti, ICANN Org, highlighted the UDRP Policy Status Report (PSR) Outline which looks at the overarching goals of the policy. Currently, there are six dispute resolution providers authorized by ICANN to conduct administrative proceedings under the UDRP. Two documents are required for universal, uniform operation of the UDRP. The UDRP PSR Outline covers purpose, what UDRP looks like post GDPR as well as a summary of findings. There is an assessment of the efficiency of the UDRP, whether it's cost effective, and how it holds up against traditional litigation, The framework will also focus on fairness (considering forum shopping, the process for selection of panelists by UDRP providers and an overview of reverse domain name hijacking) as well as how abuse is addressed (cybersquatting, UDRP related data from ICANN Org departments and education of domain name registrants). The team will also be focusing on the UDRP dataset available. Regarding the timeline of completion, received input, previously collected UDRP data, additional historical data will be taken into consideration. Accuracy of data collected may vary from provider to provider.

John McElwaine, IPC, asked if feedback could be provided to suggest revisions offline.

Philippe Fouquart, GNSO Chair, suggested that it be sent to the list and shared with the GDS team.

Flip Petillion, IPC, asked what was the relation between the draft UDRP report and the slides presented.

Antonietta Mangiacotti, ICANN Org, clarified that the report ,created internally, on the UDRP was drafted a while back, taking into account data and complaints received.

Flip Petillion, IPC, asked that when the report is ready that it be circulated to the community.

Philippe Fouquart, GNSO Chair, clarified that the data served towards the framework presented here.

Marie Pattullo, BC, highlighted that her email to the Council mailing list was sent with the intention of creating an efficient RPM phase 2 charter, and that the BC believes GDS staff were not the best fit for the task ahead.

Action Item:

- GNSO Council members may provide comments if any to the Council distribution list not later than Wednesday, 29 September.

Item 6: COUNCIL DISCUSSION - CCWG-Accountability WS2 Implementation - Next Steps for the GNSO Council

Mary Wong, ICANN Org, presented next steps for the Council on WS2 implementation. She highlighted topics of interest for the GNSO Council in advance of the ICANN Org presentation on the 100+ recommendations. Categories aimed at the community are distinctive at various levels (SO/AC, RALO, SGs). She thanked the GNSO Council small team who looked at all recommendations directed at the community and identified the Council proper and constituency proper recommendations. Certain recommendations directed at ICANN Org are currently being implemented. Of the recommendations directed at the community, some will require cross community coordination (topic of diversity for instance has as dependency the common understanding of diversity) and a community group could be set up for that purpose. The SOAC Chairs will need to provide feedback by 4 October 2021. There are two tracks of work (requiring cross community coordination or not). As next steps, the GNSO Council will review the staff prepared initial inventory analysis to see if it captures what the small team has previously agreed on, and to discuss the assigned priority levels. Stakeholder groups and constituencies will be reviewing their own recommendations deemed pertinent to their groups. Council needs to review their own.

This is on top of work which is already ongoing, but WS2 is key to consider. From the Org perspective, it is for the community to decide on the pace and timeline of implementation. It will probably be a multi-year effort. Some of the recommendations are framed as good practice and not deemed mandatory, however community groups need to review them.

Philippe Fouquart, GNSO Chair, mentioned that this would be under the framework for continuous improvement.

- Action Items: none

Item 7: ANY OTHER BUSINESS

7.1 - SSAD Operational Design Phase

Philippe Fouquart, GNSO Chair, drew councilors' attention to the report from GNSO liaison to the ODP shared on the list on 10 September.

7.2 - Criteria for evaluating candidates for the SubPro ODP role

Philippe Fouquart, GNSO Chair, encouraged councilors to provide their input on the list. The Expressions of Interest call has ended, the Standing Selection Committee will start its work shortly.

It would be useful to have a discussion on two aspects : 1) how the SSC approaches the question of material interest, where typically candidates need to disclose their interests for transparency sake but it shouldn't disqualify them from liaison roles. The SSC should therefore not consider the declared interests as disqualifying. 2) Whether the ODP Liaison role is compatible with other volunteer roles that candidates may have. Does Council have specific requirements if candidates have commitments already with other roles?

Kurt Pritz, RySG, stated that it was inappropriate for Council to provide directions to the SSC after the EOI was posted with the criteria in it, as it seems to change the criteria after the fact. The SSC is going to pick the best person for the job in any case.

Philippe Fouquart, GNSO Chair, responded that the intent is not to change the criteria but to also provide further information to candidates about how their information disclosed would be received.

Pam Little, GNSO Council Vice Chair, agreed with Philippe Fouquart. The first point is trying to relax the rules rather than tighten them: preferring merit over interest. The second aspect is within Council's remit to consider incompatibility within two roles.

Philippe Fouquart, GNSO Chair, agreed that the second point was candid, to ensure Council was on board with the approach.

Action Items: none

Philippe Fouquart, GNSO Chair, adjourned the meeting at 22:00 UTC on Thursday 23 September 2021