

## Minutes of the GNSO Council Meeting 15 June 2022

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

GNSO Council meeting held 13:15 CEST (11:15 UTC): <https://tinyurl.com/45b569zw>

04:15 Los Angeles; 07:15 Washington DC; 12:15 London; 13:15 Paris; 14:15 Moscow; 21:15 Melbourne

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

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

#### **Contracted Parties House**

Registrar Stakeholder Group: Antonia Chu, Theo Geurts, Greg Dibiase,

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

Nominating Committee Appointee (NCA): Desiree Miloshevic

#### **Non-Contracted Parties House**

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

Non Commercial Stakeholder Group (NCSG) Manju Chen, Wisdom Donkor, Farrell Folly, Stephanie Perrin (apologies, proxy to Manju Chen), Juan Manuel Rojas, Tomslin Samme-Nlar,

Nominating Committee Appointee (NCA): Paul McGrady

#### **GNSO Council Liaisons/Observers:**

Justine Chew – 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

Marika Konings - Vice President Policy Development Support

Julie Hedlund – Policy Development Support Director (remote)

Steve Chan – Senior Director

Berry Cobb – Policy Consultant

Emily Barabas – Policy Senior Manager

Ariel Liang – Policy Senior Specialist (remote)

Caitlin Tubergen – Policy Director (remote)

Terri Agnew - Operations Support, Lead Administrator

Nathalie Peregrine – Manager, Operations GNSO

[Zoom recording](#)

[Transcript](#)

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

1.1 - Roll Call

**Philippe Fouquart, GNSO Chair**, welcomed on-site and remote councilors to the session.

1.2 - Statements of Interest

There were no updates to Statements of Interest.

### 1.3 - Review / Amend Agenda

The agenda was supported 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 14 April 2022 were posted on 29 April 2022.

[Minutes](#) of the GNSO Council meeting on 19 May 2022 were posted on 03 June 2022.

## **Item 2. Opening Remarks / Review of Projects and Action List**

**Steve Chan, ICANN Org**, reminded council members that, in addition to the email update [circulated](#) earlier, an explanatory [Zoom recording](#) had been made for councilors to become better familiarized with the Project Management tool suite.

**Philippe Fouquart, GNSO Chair**, encouraged all to review the recording, and added that further work on a single repository for PDP development updates would always be considered beneficial.

## **Item 3. Consent Agenda: no item**

## **Item 4. COUNCIL VOTE - Final Report and Recommendations From the EPDP on Specific Curative Rights Protections for IGOs**

**John McElwaine, GNSO Council Liaison to the EPDP, Intellectual Property Constituency (IPC) councilor**, seconded by **Juan Manuel Rojas, NCSG**, submitted a [motion](#) to approve the recommendations from the EPDP on Specific Curative Rights Protections for Intergovernmental Organizations (IGOs). This motion was deferred during the May 2022 GNSO Council meeting.

Whereas:

1. In April 2019, the GNSO Council [approved](#) the first four recommendations from the IGO-INGO Access to Curative Rights Protection Policy Development Process (PDP), but not Recommendation #5, which the Council referred to the Review of All Rights Protection Mechanisms (RPMs) PDP, for it to consider as part of its Phase 2 work;
2. In January 2020, the GNSO Council [approved](#) an Addendum to the RPMs PDP Charter that created an IGO Work Track to address the concerns that Councilors had expressed regarding Recommendation #5 of the IGO-INGO Access to Curative Rights Protections PDP;
3. In October 2020, the GNSO Council launched a call for [expressions of interest](#) for a Chair of the IGO Work Track and a [call for volunteers](#) from the groups identified in the Addendum;
4. In January 2021, Phase 1 of the RPMs PDP concluded in with the GNSO Council's approval of all its thirty-five recommendations;
5. In August 2021, in accordance with its [Expedited Policy Development Process \(EPDP\) Manual](#), the GNSO Council approved the initiation of an EPDP to carry forward the work and momentum of the IGO Work Track as a purely procedural matter, with the [EPDP Charter](#) reflecting the same scope of work as was outlined in the Addendum;

6. On 14 September 2021, the EPDP team published its [Initial Report for Public Comment](#);
7. Following the end of the Public Comment period, the EPDP team [reviewed](#) the comments that were submitted and amended its [proposed recommendations](#) as it considered necessary, based on the input received and the EPDP team's continued deliberations;
8. The EPDP team is proposing five final recommendations in its Final Report, which are intended to be interdependent (as outlined in Section 13 of the [PDP Manual](#)) and which have attained "Full Consensus" within the EPDP team;
9. The EPDP delivered its [Final Report](#) to the GNSO Council on 4 April 2022.

Resolved:

1. The GNSO Council approves, and recommends that the ICANN Board adopt, all five (5) final EPDP recommendations as documented in the EPDP team's [Final Report](#).
2. Should the EPDP recommendations be adopted by the ICANN Board, the GNSO Council requests that ICANN org convene an Implementation Review Team, to assist ICANN org in developing the implementation details for the EPDP recommendations and ensure that the resultant implementation conforms to the intent of the approved The Implementation Review Team shall operate in accordance with the [Implementation Review Team Principles and Guidelines](#) that the GNSO Council approved in June 2015.
3. The GNSO Council thanks the EPDP leadership team and the members of the EPDP team for their commitment and hard work in completing the policy work on this long-standing issue within the GNSO.

After providing background information to the motion, **Philippe Fouquart, GNSO Chair**, opened the floor to councilor questions.

**Thomas Rickert, Internet Service Providers and Connectivity Providers (ISPCP)**, raised that whilst his constituency had been part of the Policy Development Process (PDP) and part of the consensus decision, there had been questions around the possible issue with acronyms. Acronyms are the territory where conflicts are more likely than with full names. There is an opportunity for the registered name holder to go to arbitration if the court does not want to hear the case. But in the case of domain holders who have had a domain for many years, they may be facing the risk of a UDRP and forced to defend in an arbitration with substantial costs. Are there protections for legacy registrants who registered domain names a long time ago without knowledge of conflicts with IGO acronyms?

**Chris Disspain, IGO WT Chair**, responded that the work track had discussed the question at length, agreeing that the group's output would be better resulting in a set of overarching principles, with further details best dealt with under implementation which would focus on arbitration rules.

**Jeff Neuman, GNSO Liaison to the GAC**, added that in theory, the UDRP would weed out the issue before it came to arbitration.

**Thomas Rickert, ISPCP**, clarified that an IGO does not have a trademark, so a registrant having checked the trademark database may not be aware of the existence of a conflict. He thanked Council for the opportunity to have the ISPCP concern included in the meeting record.

Councilors voted unanimously in favor of the motion.

## [Vote results](#)

### Action Items:

- With respect to the Final Report and Recommendations From the EPDP on Specific Curative Rights Protections for IGOs, the GNSO Secretariat, on behalf of the GNSO Council, to send a note thanking the EPDP leadership team and the members of the EPDP team for their commitment and hard work in completing the policy work on this long-standing issue within the GNSO

### **Item 5. COUNCIL DISCUSSION - Impact of SSAD Light on Other Work**

**Sebastien Ducos, GNSO Council Vice Chair**, leading the effort of the EPDP Phase 2 Small team SSAD, provided background on what delays the going ahead of the SSAD Light paper would trigger, most notably on the SubPro ODP effort. Whilst the latter impacts the GNSO, other lesser GNSO-impacting projects could be put on hold. Eleeza Agopian, ICANN org, earlier informed the small team, the SubPro ODP would not necessarily be impacted by the delay and that it would continue working within the target before ICANN75. He added that he would like to be able to tell Becky Burr, the GDPR Caucus and Board, that this is a workable option.

**Jeff Neuman, GNSO Liaison to SubPro ODP**, asked Council if they had any questions regarding the impact on the advance of the SubPro ODP effort.

**Sebastien Ducos, GNSO Council Vice Chair**, said that ICANN Org rated the impact as minimal on the SubPro ODP advance.

**Paul McGrady, NomCom Appointee, Non Contracted Party House, (NCA NCPH)** supported giving the go-ahead for SSAD Light.

**Kurt Pritz, GNSO Registry Stakeholder Group (RySG)**, reminded councilors that he had [circulated](#) the RySG's thinking on the matter a few days earlier. stating that what should be a staff / Board decision has unnecessarily triggered time-consuming discussion among the community groups. However, this did not eliminate the fact that deadlines should be met and with appropriate accountability attached.

**Sebastien Ducos, GNSO Council Vice Chair**, responded that Eleeza Agopian, ICANN org, had confirmed a delay to the SubPro ODP in the Zoom chat, whereas this had not been his understanding.

**Maxim Alzoba, RySG**, added that every year ICANN outlines financial plans and staff projects, All elements needed to be assessed clearly by ICANN org for all parameters to be clear and unchanging.

**Eleeza Agopian, ICANN org**, clarified that the work on this paper would cause a delay of 6 weeks to the Subpro ODP due to overlapping resources. Work would continue, it would not stop, but would be delayed.

**Jeff Neuman, GNSO Liaison SubPro ODP**, pointed out that the original deadline was late October 2022, an additional 6 weeks leading to end of year holidays; the new date would therefore be mid-january. April would now be the earliest the ICANN Board could vote on the policy. He asked for clarification on Council's position on the topic.

**Paul McGrady, NomCom Appointee NCPH**, asked whether Jeff Neuman would be communicating this to the Board, or whether it would be council.

**Sebastien Ducos, GNSO Council Vice Chair**, clarified that **Jeff Neuman, GNSO Liaison**, should confirm with the SubPro ODP the length of the impact, not that Jeff should communicate back.

**Eleeza Agopian, ICANN org**, confirmed she was communicating on behalf of the SubPro ODP team.

**Philippe Fouquart, GNSO Chair**, summarized there are two points of discussion: what the SubPro ODP Liaison may wish to convey to the ODP team, and Council's position on the announced delay. The overarching perception was that Council needed to be informed of any changes to the announced delay, but that Council should not be requested to weigh in on ICANN org operational issues.

**Kurt Pritz, RySG**, said Council recognized these were two key efforts for many community members and it was therefore difficult to prioritize. The advice therefore to the Board would be to work to the best deadline on both projects

**Sebastien Ducos, GNSO Council Vice Chair**, clarified that the Board was expecting an answer from Council - and Kurt's suggestion was a good one - before it took its decision.

**Greg Dibiase, RrSG**, suggested a response along the lines of "SSAD Light is important work, but Council is concerned about the delay to the SubPro ODP."

**John McElwaine, Intellectual Property Constituency (IPC)**, asked if we knew what the delay to SSAD Light would be if the decision was to move ahead with SubPro ODP, and what are the other contingencies?

**Desiree Miloshevic, NCA Contracted Party House (CPH)**, mentioned that it seemed Council agreed to respond to the Board that the issue seems to be operational and not a policy issue, Council could assist further if more data would be shared so small teams could be formed to help on smaller issues.

**Sebastien Ducos, GNSO Council Vice Chair**, responded to John McElwaine that SSAD Light would be postponed until late September, early October should SubPro ODP go ahead,

**Jeff Neuman, GNSO Liaison to SubPro ODP**, suggested asking for an overall approach to the SSAD project as the delay currently being discussed concerned the drafting of a paper, and not necessarily all steps of the project.

**Maxim Alzoba, RySG**, detailed that the 6 week delay was covering the design of the paper, not the development itself; the project may stretch into further delays.

**Philippe Fouquart, GNSO Chair**, agreed to convey the importance of both projects and the concern about the delay. Limiting the impact of SSAD work on SubPro ODP but Council would not weigh in on prioritization as it is out of its remit, it was requesting, however, transparency of information regarding any further delay.

Action Item:

- GNSO Council leadership to develop a draft letter to the ICANN Board for GNSO Council review concerning the impact of SSAD light on other work, specifically the SubPro ODP, encouraging the Board to move forward with both efforts to the extent possible

**Item 6. COUNCIL DISCUSSION - SubPro GGP**

During the discussion on the work on the SubPro ODP and feedback received on subset number 2, there was a question identified on the level of substantive work that applicant support may require. This may not be adequate for implementation work. It was agreed that staff and the liaisons would come up with the outline of a GNSO Guidance Process. The initiation of which would give Council an idea of what is to come. There was no precedence to this.

**Jeff Neuman, SubPro ODP Liaison**, clarified that the intention was that Council would be given the green light to go ahead with GGP of Applicant Support with a Steering Group who would be free to work with experts as needed. The GGP charter and composition discussion has already taken 3 months. Council was invited to provide topics which could be added now to the remit of the Steering Committee, to plan ahead, without implying these topics would be worked on now. The Steering Group will be representative, but can also have the work done by a handful of experts.

**Paul McGrady, NCA NCPH**, spoke in support of the tool and of the topic of applicant support as ideal for kicking off the effort. He recommended narrowing the scope and the composition of the GGP.

**Kurt Pritz, RySG**, warned against getting too great a distance between the effort and Council, but also about taking on more practical work which would be of implementation's remit.

**Tomslin Samme Nlar, GNSO Council Vice Chair**, added that he strongly believed the community should be doing this work and it should not be restricted to the Council. Council should, however, remain an overseer.

**Justine Chew, ALAC Liaison to the GNSO**, asked whether the Council or the Steering Committee would be doing the initial scoping work.

**Philippe Fouquart, GNSO Chair**, replied that there were scoping elements in the Final SubPro Report already, and that hopefully, the steering committee would be composed of SubPro members.

**Jeff Neuman, GNSO Liaison to the GAC**, agreed with Philippe Fouquart on the existence of scope in the SubPro Final Report.

Councilors agreed the GGP priorities should be presented in sets to avoid having to re-address these steps moving forward. A motion will be put forward for the July 2022 meeting.

Action Item:

- GNSO Council leadership to revise the GGP per the discussion during the ICANN74 GNSO Council meeting and draft a motion for the GNSO Council to review and consider it for a vote at the July Council meeting.

## **Item 7. COUNCIL DISCUSSION - SubPro ODP Update**

**Jeff Neuman, GNSO Liaison to the SubPro ODP**, provided an update to Council. There are two question sets: #3 has been reviewed with additional comments, and needs go-ahead from Council to forward it to the ICANN SubPro ODP team. #4 is the more substantive one. It's very long with many questions. Jeff Neuman has drafted responses for councilors to comment on or add to. The ICANN ODP team essentially repeated comments on this question set that they made to the SubPro draft Final Report, which the SubPro PDP WG considered and took into account in the recommendations. Council comments now should not override SubPro PDP WG recommendations but councilors should review Jeff's draft responses to ensure all agree. Ideally these responses would be sent back to the SubPro ODP team as soon as possible.

**John McElwaine, IPC**, on question set #1, admitted he did not know how to answer several items, which may also explain why councilors were remaining silent. Prior SubPro PDP knowledge would seem to be necessary. A delegation process would be needed to agree on a communal response on behalf of Council.

**Philippe Fouquart, GNSO Chair**, agreed and reminded that Council was always going to rely heavily on the GNSO SubPro ODP Liaison. This however did not exclude Council from providing clear support to the liaison.

**Jeff Neuman, GNSO SubPro ODP Liaison**, highlighted in the Zoom chat that there was support for a standalone GNSO council call to go over question set #4.

**Paul McGrady, NCA NCPH**, thanked Jeff and acknowledged the workload he was dealing with was heavy. He, alongside Justine, offered to help Jeff as a standing resource, given they were both members of the SubPro PDP WG.

**Philippe Fouquart, GNSO Chair**, agreed that a small standing team would be helpful on the matter of SubPro ODP.

### **Action Item:**

- Staff to invite interested Councilors to join a call to discuss Jeff Neuman's suggested responses to SubPro Question Set #4 and to develop a final draft response for Council review.

## **Item 8: COUNCIL DISCUSSION - Closed Generics Small Team**

**Philippe Fouquart, GNSO Chair**, reminded the Council that they responded to the Board invitation to have a dialogue with the GAC about closed generics.

The small team was charged with reviewing three tasks and [circulated](#) its [recommendations](#) to Council on Saturday 10 June 2022.

First task: criteria of the facilitator, the small team requested independence and commitment, absence of conflict of interest. Prior involvement is not a requirement but a nice to have. Maybe a professional facilitator would be helpful This aligns with the GAC's initial feedback.

Second task: Extension to ALAC; no concern from the small team to include ALAC. The balance of members, however, was discussed, and through Justine Chew, ALAC Liaison to the GNSO, all agreed the ALAC would have one seat. The GAC offered to have one seat removed for more balance.

Third task: Extension of the dialogue: Whatever the dialogue would come up with, the follow-up should be in keeping with the GNSO operating procedures and would be relayed to the Board as policy recommendations. The framing paper was adjusted: definitions which are referenced in the SubPro Final Report are a starting point but not necessarily prescriptive. As far as criteria are concerned, these should be predictable for applicants. In terms of size of each set of participants: 6 to 8 people would be a good match.

The small team reiterated the need once again for external expertise.

**Philippe Fouquart, GNSO Chair**, asked if there was concern with responding to the Board and to the GAC that the Council would be happy to move forward.

**Mark Datysgeld, Business Constituency (BC)**, added his support for the inclusion of the ALAC in this effort. He praised ALAC's contribution, via Justine Chew, to the Council Small Team on DNS Abuse.

**Manju Chen, Non-Commercial Stakeholder Group (NCSG)**, said that since the document was circulated on Saturday, there may not have been sufficient time for all to digest the content prior to sending it to the Board and the GAC. She added that it would be good to add to the criteria that there be no future financial connections in the composition of membership, so no intention of representing applicants to closed generics in the future.

**Justine Chew, ALAC Liaison to the GNSO**, thanked councilors for supporting the ALAC's participation in the GNSO-GAC dialogue. She highlighted that ALAC requested a member plus an alternate, as opposed to a liaison, so as to distinguish it from her role on Council. Whilst ALAC was grateful for the GAC's gesture of possibly assigning one of its seats to ALAC, Council should consider having ALAC as a third party, outside of the GNSO and GAC contingents, to be fair to both GNSO and GAC in terms of the balance discussed by the small team.

**Paul McGrady, NCA NCPH**, expressed delight at the dialogue moving forward. He agreed with the ALAC being a partner in the process and praised Justine Chew for her contributions. Regarding the NCSG's suggestion of excluding voices who have a role in the system. The small team discussed this at length, as ICANN Bylaws is a multistakeholder community, where having a stake in the discussion is in the nature of the interactions of the community.

**Philippe Fouquart, GNSO Chair**, added that members would be expected to contribute as independent individuals and not as representatives of their communities, with an aim to find a happy medium on the topic.

**Tomslin Samme Nlar, GNSO Council Vice Chair, NCSG**, indicated that the next step is not policy development, it is meeting with the GAC to develop a framework first, not coming to a policy development process as such. The lack of financial interest brought upon by the spirit of making sure participants have that independence to work towards a common goal.

**Paul McGrady, NCA NCPH**, argued that excluding voices comes to enhancing others, and also missing out on ideas. He expressed support for ALAC and NCSG being at the table for a multitude of views.

**Manju Chen, NCSG**, insisted that the NCSG was against the financial interest in membership composition, but never against the topics of closed generics, nor the public interest. The NCSG

recommendations are for members to not be bound by their stakeholder groups or constituencies, how is it fair then to have members who could be bound by attorney – client relations?

**Philippe Fouquart, GNSO Chair**, concluded that Council was overall happy with recommendations as they were distributed on Saturday. He expressed hesitation as to adding the latest NCSG recommendation, as it would be hindering individual point of view. He suggested keeping the recommendations as they are, kick-starting the discussion, as the small team has had more than four weeks to work on the recommendations.

**Manju Chen, NCSG**, asked for clarification on next steps and if the NCSG additional comment on financial interest independence could be mentioned in the communication to the GAC and Board.

**Philippe Fouquart, GNSO Chair**, confirmed he was going to circulate the recommendations to the Board and GAC as the elements within the small team had been available to the small team for over two weeks. He added that the NCSG's suggestion would be captured in the GNSO Council meeting minutes for the record.

Action Item::

- GNSO Council leadership to convey the Closed Generics Small Team's recommendations to the GAC and the Board.

**Item 9: COUNCIL DISCUSSION - GNSO PDP Improvements - Tracking and Coordination Discussion Paper**

In the interests of time, this item was deferred to the GNSO Council Wrap Up session on Thursday 16 June, 2022.

**Item 10: Any Other Business**

**10.1: Open Mic**

George Kirikos said that the vote on the Final Report and Recommendations from the EPDP on Specific Curative Rights Protections for IGOs was an unforgivable betrayal of domain name registrants' rights. He read Working Group member comments for the record. Please see pages 88 - 93 of the [transcript](#) of the call for the full text.

**Philippe Fouquart, GNSO Chair**, adjourned the meeting at 13:25 UTC.

The next GNSO Council meeting will take place on Thursday 21 July 2022.