Minutes of the Extraordinary GNSO Council Meeting 05 June 2023
Agenda and Documents

GNSO Council meeting on Monday, 05 June at 20:00 UTC: https://tinyurl.com/2fa27efz.

13:00 Los Angeles; 04:00 Washington DC; 21:00 London; 22:00 Paris; 24:00 Moscow; (Tuesday) 06:00 Melbourne

List of attendees:
Nominating Committee Appointee (NCA): **– Non-Voting** – Anne Aikman Scalese
Contracted Parties House
Registrar Stakeholder Group: Antonia Chu(absent), Greg DiBiase, Theo Geurts (apologies)
gTLD Registries Stakeholder Group: Nacho Amadoz, Kurt Pritz , Sebastien Ducos
Nominating Committee Appointee (NCA): Desiree Zeljka Miloshevic Evans
Non-Contracted Parties House
Commercial Stakeholder Group (CSG): Marie Pattullo, Mark Datysgeld, Osvaldo Novoa (apologies),
Thomas Rickert, John McElwaine, Susan Payne
Non-Commercial Stakeholder Group (NCSG): Stephanie Perrin, Bruna Martins dos Santos (absent),
Wisdom Donkor, Tomslin Samme-Nlar, Farell Folly, Manju Chen
Nominating Committee Appointee (NCA): Paul McGrady
GNSO Council Liaisons/Observers :
Justine Chew : ALAC Liaison
Jeff Neuman: GNSO liaison to the GAC
Everton Rodrigues: ccNSO observer (first meeting)

Guests:
Avri Doria – ICANN Board
Becky Burr – ICANN Board

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 Policy Management
Steve Chan - Senior Director, Policy Development Support & GNSO Relations
Julie Hedlund - Policy Development Support Director (GNSO)
Berry Cobb - Senior Program Manager, Policy Development Support
Emily Barabas - Policy Development Support Senior Manager (GNSO) (apologies)
Ariel Liang - Policy Development Support Senior Specialist (GNSO)
Caitlin Tubergen - Policy Development Support Director (GNSO)
Terri Agnew - Policy Operations Specialist (GNSO)
Devan Reed - Secretariat Operations Coordinator

Transcript

Item 1. Administrative Matters

1.1 - Roll Call

1.2 - Statements of Interest (SOI).

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 Extraordinary GNSO Council meeting on 04 May 2023 were posted on 22 May 2023.

Minutes of the GNSO Council meeting on 25 May 2023 were posted on 09 June 2023.

Sebastien Ducos, GNSO Chair welcomed all to the Extraordinary GNSO Council meeting, reviewed the agenda, noted the previously posted minutes, and passed the floor to Paul McGrady, SubPro Pending Recommendations small team lead.

Action items: none

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.](#)

Action items: none

Item 3: COUNCIL DISCUSSION - SubPro - Progress Update on Recommendations Marked as Pending

Paul McGrady, Small Team Lead, introduced the [slide deck](#) and shared that there were no considerable changes since the last meeting on [04 May 2023](#). He shared that the small team has boiled down what they are calling "landing spots" (which were previously called buckets) to five options. ICANN Board input is expected by ICANN77. Council cannot finalize recommendations before receiving input from the Board.

Paul McGrady, Small Team Lead, continued to review the [Board Resolution](#) and the potential avenues of resolution, or landing spots in detail including the potential timelines involved on [slides 8 through 11](#).

Kurt Pritz, RySG, asked if the small team has determined the only way to implement one of the recommendations in the SubPro final report is through a Bylaws change.

Paul McGrady, Small Team Lead, clarified that the small team does not make the determination but there are some sort of recommendations from the small team to Council about Public Interest Commitments (PICs) and Registry Voluntary Commitments (RVCs) that are not binding to Council.

Kurt Pritz, RySG, asked to clarify if the small team's determination is just a preliminary recommendation and that if the answer is that a recommendation cannot be implemented without a Bylaws change, then the council may drop the recommendation, modify the recommendation, or recommend a bylaw change.

Paul McGrady, Small Team Lead, responded that ultimately the Council may take a recommendation back or the board might decide to not adopt the recommendation and the Council could provide a supplemental recommendation.

Susan Payne, IPC, asked if Council will ultimately need outside of Council advice on matters of interpretations of the Bylaws.

Paul McGrady, Small Team Lead, explained that he observed that the Board is not of one mind regarding fundamental Bylaws changes and that the Board is genuinely interested in what the Council has to say.

Becky Burr, ICANN Board, shared that the Board is interested in the Council's assessment of whether or not a Bylaws amendment could be put through successfully. After receiving informed input, it could be said that the Bylaws are ambiguous and could be subject to challenges. Attempting to change the Bylaws and being unsuccessful would have enforcement consequences.

Jeffrey Neuman, GNSO Liaison to the GAC, asked for the discussion to move on to the next step which is a socialization of an amendment to the Bylaws to the groups to ensure there would be support for amendments to the Bylaws.

Kurt Pritz, RySG, emphasized that the matter of enforcement of PICs should be settled as soon as possible.

Avri Doria, ICANN Board, noted that there seemed to be certainty from some within the PDP that this could be done under the Bylaws as they are currently written. However, if it is decided that it is not currently enforceable then the recommendations do not serve as the PDP intended.

Stephanie Perrin, NCSG, shared that as she understands the discussion in the small team, ICANN and contracted parties can put anything they would like in their contracts, even if it is not in ICANN's scope or remit. She gave an example of dot doctor–that since ICANN is not a nation state passing laws, it is not up to ICANN to worry about enforcing that only legally recognized doctors in their appropriate jurisdictions are allowed to have names there. However, regulating content is different and opens ICANN up to challenges and lawsuits.

Becky Burr, ICANN Board, addressed Kurt Pritz' question. She clarified that ICANN would attempt to enforce, and that the enforcement could be challenged and that the consequences of losing that challenge would be significant. It would be a sort of statement of the community's views.

Tomslin Samme-Nlar, NCSG, stated that his question, whether the Council knows who's responsible to determine if the recommendations as written are enforceable by the Bylaws and acknowledged that his question was answered previously.

Jeffrey Neuman, GNSO Liaison to the GAC, suggested separating the issues of judgment and enforcement. The registry needs to agree on the appropriate party to make the judgment as to whether it is acting in accordance with the contract or not.

Kurt Pritz, RySG, considers whether the Council should make the call whether the Bylaws need to be amended to accommodate PICs and the Bylaws are unable to be amended, then the GAC Advice cannot be followed

Paul McGrady, Small Team Lead, confirmed that the working group came to the conclusion that PICs and RVCs are within the scope of the Bylaws or else the recommendations would not have been made.

Thomas Rickert, ISPCP, referenced UDRP and URS to note that there is precedent for policy where Contracted Parties are required to implement decisions made by a third party dispute resolution provider. He suggests taking this approach into consideration when writing any recommendations to the board.

Paul McGrady, Small Team Lead, thanked all for the healthy discussion and continued to review past experiences of Board non-adoption timeframes. He also reviewed the Closed Generics EPDP timeline which estimates 96 weeks for completion.

Susan Payne, CSG, expressed concern about spending 96 weeks to continue discussing Closed Generics.

Paul McGrady, Small Team Lead, agreed with Kurt Pritz, RySG's chat message that he is not convinced that an EPDP is necessary and that other options should be considered.

Steve Chan, ICANN org, clarified that staff created the timeline based on past experience and highlighted that the core part of the EPDP is 36 weeks. He also stated that the GGP has been identified as a potential solution–but EPDP and GGP share a number of the same procedural steps.

Steve Chan, ICANN org, reminded all that these are timeline estimates and there is nothing precluding the work occurring faster than predicted.

Paul McGrady, Small Team Lead, continued to the IDNs EPDP Phase 2 estimated timeline and started the discussion portion of the meeting.

Greg DiBiase, GNSO Council Vice-Chair, shared that Council may need a template to be working from on the socialization point as different people may describe the issue differently.

Paul McGrady, Small Team Lead, shared that fits into Kurt Pritz, RySG's question in the chat asking if the socialization of a bylaw would require a draft. Paul McGrady, Small Team Lead confirmed that it would likely require a draft of an issue statement or talking points.

Steve Chan, ICANN org, clarified that staff tried to look forward and put down on paper what a possible set of deliverables would look like. This document will be made available to the Council after the meeting.

Susan Payne, IPC, asked if there is an alternate timeline available for the IDNs EPDP that reflects the best case scenario.

Steve Chan, ICANN org, shared that the IDNs EPDP did not change their timeline to ensure that it is achievable. However they want to be clear that they are trying to pull in the timeline where possible.

Ariel Liang, ICANN org, explained that the group did detailed work estimating how many meetings it will take to reach completion and the timeline did not change.

Steve Chan, ICANN org, continued to explain the staff document, reviewing the Closed Generics and pending recommendations portions.

Anne Aikman-Scalese, NCA, asked if Council will be briefed regarding the Closed Generics framework during the Day Zero meeting at ICANN77.

Mary Wong, ICANN org, shared that the Facilitated Dialogue participants are preparing to finalize a draft of the preliminary framework by the end of the week and will hold open sessions during ICANN77.

John McElwaine, GNSO Council Vice-Chair, confirmed that councilors should have something to look at after the Wednesday, 07 June 2023 meeting of the Facilitated Dialogue.

Steve Chan, ICANN org, encouraged the Council to review the staff document and look at the format rather than the content, to see if it could be reasonable as a final deliverable.

Steve Chan, ICANN org, briefed the council on the Day Zero schedule. There will be four sessions dedicated to reviewing the work plan and timelines, making progress on the pending recommendations, and reviewing the recommendations that the board has already adopted.

Sebastien Ducos, ICANN org, shared that leadership will meet on Saturday, 10 June 2023 to finalize the agenda for the 11 June 2023 ICANN77 Day Zero meeting and moved forward to the any other business portion of the meeting.

Action items:

1. Staff to circulate the draft work plan/timeline document reviewed during the meeting.

2. Re: Bylaws Changes: In order for the GNSO Council to socialize this issue, the Small Team will draft an issue statement and talking points.
3. Re: Day Zero Agenda: Staff to provide reference materials.

Item 4: ANY OTHER BUSINESS

4.1 Standing Predictability Implementation Review Team ("SPIRT") (Anne Aikman-Scalese)

Anne Aikman-Scalese, NCA, discussed SPIRT (pronounced "spirit") and topic two in the Final Report which deals with the need for predictability in the next round. The SPIRT team is specified in Annex E to the final report to help determine what category and issue that arises after the Applicant Guide Book.

Susan Payne, IPC, continued to explain that this came out of the most recent meeting of the IRT, as one of the tasks of the IRT may be to charter the SPIRT team. There is some disagreement as to whether Council or the IRT should charter the SPIRT team. It should be in place by the time the AGB is getting close to completion.

Action Items: After confirming with leadership at ICANN77 on 11 June, Anne and Susan will report to GDS staff that at this time the sense is that the GNSO Council will likely wish to establish the criteria and framework in order to charter the SPIRT.

4.2 Data accuracy in the context of NIS2 (Thomas Rickert)

Thomas Rickert, ISPCP, raised awareness to the drafting of international laws on registration data accuracy and encouraged all to raise ideas on how to avoid fragmentation of the marketplace if national lawmakers have diverging ideas on what should be done.

Stephanie Perrin, NCSG, asked if the European Data Protection Board has made a statement on this, and if the Accuracy Scoping Team needs to be reconvened to address these issues?

Thomas Rickert, ISPCP, responded that there is nothing from the European Data Protection Board, and that he is not sure where the proper place is to have this discussion. Thomas Rickert, ISPCP, further encourages all to think about the proper venue for this conversation.

Action Items: Council members to further consider this topic in light of the discussion during the 5 June meeting and come prepared with feedback for the ICANN77 Council meeting, including if/how to proceed with the Registration Data Accuracy Scoping Team recommendations.

Sebastien Ducos, **GNSO Chair,** adjourned the meeting at 22:02 UTC.

The next GNSO Council meeting will take place on Wednesday, 14 June 2023 at 17:45 UTC