Minutes of the GNSO Council Meeting 16 November 2023

Agenda and Documents

GNSO Council meeting on Thursday, 16 November 2023 at 21:00 UTC:

https://tinyurl.com/4vs4b2mh

13:00 Los Angeles; 16:00 Washington DC; 21:00 London; 22:00 Paris; 00:00 Moscow (Friday); 08:00 Melbourne (Friday)

List of attendees:

Nominating Committee Appointee (NCA): – Non-Voting – Anne Aikman Scalese

Contracted Parties House

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

gTLD Registries Stakeholder Group: Nacho Amadoz, Kurt Pritz, Jennifer Chung

Nominating Committee Appointee (NCA): Desiree Zeljka Miloshevic Evans

Non-Contracted Parties House

Commercial Stakeholder Group (CSG): Lawrence Olawale-Roberts,Mark Datysgeld, Osvaldo Novoa, Thomas Rickert, Damon Ashcraft,Susan Payne

Non-Commercial Stakeholder Group (NCSG): Stephanie Perrin, Bruna Martins dos Santos, Wisdom Donkor, Tomslin Samme-Nlar, Peter Akinremi, Manju Chen

Nominating Committee Appointee (NCA): Paul McGrady

GNSO Council Liaisons/Observers :

Justine Chew : ALAC Liaison

Jeff Neuman: GNSO liaison to the GAC (apologies sent)

Everton Rodrigues: ccNSO observer

Guests:

Donna Austin, Chair of EPDP on IDNs

Eleeza Agopian, Amanda Rose, Elena Plexida, Odeline MacDonald from ICANN staff

ICANN Staff:

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

Mary Wong - Vice President, Strategic Policy Management

Steve Chan – Vice President, Policy Development Support & GNSO Relations

Julie Hedlund - Policy Development Support Director (GNSO)

Berry Cobb - Senior Program Manager, Policy Development Support

Ariel Liang - Policy Development Support Manager (GNSO)

Caitlin Tubergen - Policy Development Support Director (GNSO)

Terri Agnew - Policy Operations Specialist (GNSO)

Devan Reed - Secretariat Operations Coordinator

[Zoom recording](#)

[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 GNSO Council meeting on 21 September 2023 were posted on 06 October 2023.
Minutes of the GNSO Council Meeting [Part 1](#) and [Part 2](#) on 25 October 2023 were posted on 10
November 2023.

Justine Chew, ALAC Liaison, announced that she has been appointed as ALAC Vice-chair
for another two year term and has been elected Vice Chair of ALAC.

Greg DiBiase, GNSO Chair, announced that Theo Geurts will step down from Council and
Prudence Malinki has been elected by the RrSG to fill his role.

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.](#)

Greg DiBiase, GNSO Chair, asked Councilors to pay extra attention to the Projects and Action
Items lists going into the Strategic Planning Session.

Item 3: Consent Agenda

- Confirm Tomslin Samme-Nlar as GNSO Representative as Decisional Participant to the Empowered Community

All councilors present voted in favor of the motion.

Vote results

Action Items: The GNSO Secretariat on behalf of the GNSO Council will communicate this decision to the ICANN Secretary which will serve as the required written certification from the GNSO Chair designating the individual who shall represent the Decisional Participant on the EC Administration.

Item 4: COUNCIL VOTE - Approval Action Community Forum at ICANN78 - Fundamental Bylaws Amendments to Articles 18 and 19 of the ICANN Bylaws

4.1 – Presentation of motion (Greg DiBiase, GNSO Chair)

4.2 – Council discussion

4.3 – Council Vote (voting threshold: simple majority)

Nacho Amadoz, GNSO Council Vice Chair, introduced the motion to approve Amendments to ICANN Fundamental Bylaws Articles 18 and 19.

Greg DiBiase, GNSO Chair, read the resolved clause of the motion.

All Councilors present voted in favor of the motion.

Vote results.

Action Items: The GNSO Secretariat on behalf of the GNSO Council will confirm to the ICANN Secretary that the Council has approved the Fundamental Bylaws Amendments to Articles 18 and 19 of the ICANN Bylaws relating to IANA Naming Function Reviews and the IANA Naming Function Separation Process.

Item 5: COUNCIL UPDATE - EPDP on Internationalized Domain Names Phase 1 Final Report
5.1 - Presentation of Final Report (Donna Austin, Chair of EPDP on IDNs)
5.2 - Council Q&A
5.3 - Next Steps

Nacho Amadoz, GNSO Council Vice Chair, noted that GNSO Council received the EPDP on IDNs Final Report and there will be a vote on this during the 21 December 2023 GNSO Council Meeting.

Donna Austin, EPDP on IDNs Chair, presented the EPDP on IDNs Phase 1 Final Report. She reviewed slides detailing background information (slides 3-5), a team overview (slides 6-7), project plan and timeline, (slide 8), a Final Report overview (slides 9-12), featured

recommendations (slides 13-22), and key changes resulting from the Public Comment (slides 24-28).

Theo Geurts, RrSG, asked if IDNs EPDP had enough technical people to support the group.

Donna Austin, EPDP on IDNs Chair, confirmed that there are several technical experts on the team, noting specifically Sarmad Hussain, ICANN org, Pitinan Kooarmornpatana ICANN org, Michael Bauland, RrSG, Jerry Sen, RySG, Dennis Tan, RySG, Jennifer Chung, RrSG, and Edmon Chung, the original chair of IDNs EPDP is the Board Liaison. Some of those people have over 20 years of knowledge on the IDNs topic itself.

T**heo Geurts, RrSG,** thanked Donna for asking and clarified that he is happy to hear that the EPDP has enough technical support.

Donna Austin, EPDP on IDNs Chair, continued to present featured recommendations (slides 13-22), and key changes resulting from the Public Comment (slides 24-28).

Anne Aikman-Scalese, NCA, asked what happens if an application for a variant fails and if the variant is later applied for by a third party, how is that dealt with?

Donna Austin, EPDP on IDNs Chair, explained that the same entity principle means that no other party can apply for a label that is part of a set.

Donna Austin, EPDP on IDNs Chair, continued to present featured recommendations (slides 13-22), and key changes resulting from the Public Comment (slides 24-28).

Item 6: COUNCIL DISCUSSION - Updates on Status of Data Processing Agreement (DPA) negotiations and Registration Data Accuracy

6.1 - Introduction of Topic (Greg DiBiase, GNSO Chair), joining from ICANN staff: Eleeza Agopian, Amanda Rose, Elena Plexida, Odeline MacDonald
6.2 - Council Discussion
6.3 - Next Steps

Greg DiBiase, GNSO Chair, reviewed the [19 October 2023 update](#) on the status of Data Processing Agreement (DPA) negotiations and Registration Data Accuracy from ICANN organization. He shared that ICANN org has joined to answer questions regarding the Data Protection Amendment and invited comments.

Justine Chew, ALAC Liaison, asked if the draft DPA will be put up for Public Comment.

Theo Geurts, RrSG, asked why ICANN org never reached out to Data escrow providers for statistics.

Greg DiBiase, GNSO Chair, noted that the question will be addressed in the next topic. ICANN assessed the scenario to see if they could access data in bulk and ICANN did not have legitimate interest to do so.

Stephanie Perrin, NCSG, noted that the Data Processing Specification (DPS) should go out for Public Comment, as the community has waited for ICANN to opine on their controllership of Escrow data and shared how important it is to contribute to the public record.

This was confirmed in Zoom chat by ICANN org: Caitlin Tubergen - ICANN Org 01:37:59 Circling back to Justine and Stephanie's question on if the DPS will go out for public comment: Following review and acceptance by the RySG and RrSG, the DPS will be published for public comment.

Theo Geurts, RrSG, commented that the CPH contracts are completely different from the contractual agreement ICANN holds with escrow or UDP providers.

Greg DiBiase, GNSO Chair, introduced the topic of Registration Data Accuracy scenarios that determined whether ICANN can produce material for the Registration Data Accuracy Scoping Team to review. He also noted that there are a number of things that impact this ongoing work such as the INFERMAL (Inferential Analysis of Maliciously Registered Domains) study and NIS2. He asked if the Registration Data Accuracy Scoping Team should be restarted, or if Council should take another action such as following through on some of the Scoping Team's recommendations.

Stephanie Perrin, NCSG, asked if anybody thought about doing a risk assessment on the data rather than a survey on the quality of the data?

Greg DiBiase, GNSO Chair, stated that this can be noted if the work is restarted.

Theo Geurts, RrSG, shared that he still does not know what Council is trying to solve with the scoping team.

Greg DiBiase, GNSO Chair, stated that it is hard to effectively know what accuracy concerns there may be.

Theo Geurts, RrSG, noted that if there is not a definition of Accuracy, Council cannot move forward.

Greg DiBiase, GNSO Chair, noted a proposal that there have been discussions about restarting this group after the DPA negotiations have ended with the Contracted Parties.

Paul McGrady, NCPH, shared that the first possible point to start the work again is when the DPA is finished, however the NIS2 implementation is also going to be a major event for the contracted parties. If that is the case, it would push this work off until that law is finalized.

Kurt Pritz, RySG, noted that the last group got as far as they could, and hence requires a significant event that allows the work to go further and suggested introducing checks for significant events such as after the DPA is executed, or after NIS2, or even after ICANN has produced INFERMAL study.

Greg DiBiase, GNSO Chair, shared that the six-month extension expires in January or February 2024. He also noted Paul McGrady's agreement with Kurt Pritz's comment.

Action Items: GNSO Council to revisit when the DPA passes, or 6 months is up (Feb 2024) and staff will add to the anticipated topics for upcoming council meetings.

Item 7: COUNCIL DISCUSSION - ICANN Board Action on the Final Report of the Cross-Community Working Group on New gTLD Auction Proceeds (CCWG-AP)

7.1 – Introduction of Topic (Greg DiBiase, GNSO Chair)

7.2 – Council discussion

7.3 - Next Steps

Greg DiBiase, GNSO Chair, shared that ICANN determined that a Bylaws amendment was not necessary, and that they could implement Recommendation 7 through terms and conditions rather than amending Fundamental Bylaws. Several members raised the idea of pursuing remedies such as request for reconsideration or an IRP. Is it feasible to proceed with these measures as GNSO Council?

Tomslin Samme-Nlar, NCSG, asked if it makes a difference that the requirement is only necessary prior the the launch of the Grant cycle, but they are acknowledging that it is required.

Greg DiBiase, GNSO Chair, answered that the way the resolution is worded, there is not a dependency on the Board changing the terms and conditions for grant applicants. If the proposed amendment failed, for example, their plan to disapply remedies through terms and conditions could still proceed.

Damon Ashcraft, IPC, noted that the IPC intends to submit a Request for Reconsideration (RFR).

Paul McGrady, NCPH, noted that Council may not have time to create a recommendation, however the Council as a whole should look at the IPC's submission and should note that GNSO Council stands behind the IPC statement. He also noted that it might be good to extend the deadlines so that the SO/ACs can better respond.

Anne Aikman-Scalese, NCA, thanked Council leadership for getting this topic on the agenda and commented that the Council will need to take a look at CCWG working guidelines regardless of whatever else occurs, as the response to the letter in relation to the Board action said that it does not need to refer back to the chartering organizations to get their approval, as this is not required in the CCWG Guidelines.

Kurt Pritz, RySG, recommended that Council should discuss sending an RFR-like letter or document to the Board, describing how the Board action is not continent with the Bylaws.

Greg DiBiase, GNSO Chair, noted that Council can write any letter, that is always an option, but it is also possible to endorse the IPCs RFR.

Paul McGrady, NCPH, noted some kind of communication indicating that the Council wants to take the issue seriously and that the issue is not going away would be useful.

Greg DiBiase, GNSO Chair, summarized that joint action as Council for an RFR is not feasible. The Council appreciates the IPC's work on this topic and will decide next steps after reviewing the IPC's RFR should they move forward with that effort.

Action Items: If the IPC submits a Request for Reconsideration (RFR), the GNSO Council will review the RFR and consider whether additional actions are needed.

Item 8: COUNCIL DISCUSSION - Consider whether further work is needed after ICANN org outreach to European Network Information Security Agency (ENISA)
8.1 - Introduction of Topic (Nacho Amadoz, Council Vice Chair)
8.2 - Council Discussion
8.3 - Next Steps

Greg DiBiase, GNSO Chair, noted that ICANN has shared a draft of the letter which is to be sent to the European Network of Information Security Agency (ENISA) and asked if Councilors have any comments.

Caitlin Tubergen, ICANN org, noted that she is here on behalf of Elena Plexida, ICANN org, and shared that she forwarded a draft to the GNSO Council on 19 October 2023 and Elena Plexida had asked for input on the draft. The overarching goal of this communication was to share information about the role of the multistakeholder model, particularly policy making, so that the model is understood, taken into account, and is respected.

Thomas Rickert, ISPCP, thanked Caitlin for outlining the letter and noted that when the small team discussed this, one of the biggest concerns was whether it was appropriate for GNSO Council to provide information on this topic. He noted that more work could be done to explain to what extent individuals or groups felt ICANN Policy was sufficient.

Susan Payne, IPC, observed differences of opinion on the content of that letter, and that there were quite strong reactions to the letter from her IPC colleagues. There is a perception that it is misleading and not wholly factual. She was asked to express that the IPC does not support that letter and does not recommend that the Council supports that letter.

Nacho Amadoz, GNSO Council VIce Chair, agreed with Susan Payne, IPC, that this does not seem to be work for the Council.

Kurt Pritz, RySG, noticed that the letter did not have a call to action or next steps. He asked if ICANN staff were anticipating a response from the recipients or if there was a plan to follow up.

Greg DiBiase, GNSO Chair, shared that a response is not expected from ENISA, and that this letter is simply to make the multistakeholder model and policy making understood.

Item 9: ANY OTHER BUSINESS

9.1 SPS Planning

Steve Chan, ICANN org, reminded Council of the SPS occurring on 29 - 31 November 2023, and reviewed the agenda.

Action Items: The GNSO Secretariat to share draft agenda and preparatory homework Google Doc folder.

9.2 Confirmation of RDRS Chair

Greg DIBiase, GNSO Chair, noted that the EPDP Small Team is becoming the RDRS Standing Committee. Sebastien Ducos has volunteered to continue as chair for the RDRS Standing

Committee if there are no objections, this will be on the consent agenda during the 21 December 2023 GNSO Council Meeting.

Action Items: Staff to add to the Consent agenda for the December meeting.

9.3 Update on Public Comment on Pilot Holistic Review - Terms of Reference

Greg DIBiase, GNSO Chair, noted that Osvaldo, Mark, and Bruna are collaborating on a draft for this Public Comment. This is due on 27 November 2023.

Bruna Martins dos Santos, NCSG, shared that they would like to request staff to provide more clarification on how the process will proceed. They agreed that the deadline is short for a lengthy review process and reinforced the need that if possible this is the only review happening at one time as it will require community support. She is working on a short draft response.

Mark Datysgeld, BC, noted that their current assessment is that the clarification is not sufficient and that this is late in the timeline. They hope to circulate the draft soon, and asked for further suggestions.

Action Items: Small Team to share their unified comment with the GNSO Council for the Council to review. Staff to send a reminder.

9.4 Update on GAC Communique

Susan Payne, IPC, noted that the Council response to the GAC Communiqué is not in the nature of advocacy, it intends to flag relevant GNSO activity, previous correspondence, and previous PDPs that are relevant to the piece of advice or issue of importance that was raised. The small team has draft inputs that are works in progress and understands the Board will meet with the GAC on 05 December 2023. They intend to circulate their documents on the list next week on 21 November 2023.

Action Items: Small Team action to submit draft input to the GNSO Council for consideration.

Ad-hoc Item 9.5

Steve Chan, ICANN org, shared that Ariel Liang, ICANN org, is leaving the GNSO team to support the New gTLD Program. He thanked her for everything she has brought to GNSO, and noted that she will continue to support IDNs EPDP.

Greg DiBiase, **GNSO Chair,** adjourned the meeting at 23:01 UTC.

The next GNSO Council meeting will take place on Thursday, 21 December 2023 at 13:00 UTC.