

Minutes of the GNSO Council Meeting 21 December 2023

Agenda and Documents

GNSO Council meeting on Thursday, 21 December 2023 at 13:00 UTC: <https://tinyurl.com/yuau3nvd>

05:00 Los Angeles; 08:00 Washington DC; 13:00 London; 14:00 Paris; 16:00 Moscow; 00:00 Melbourne (Friday)

List of attendees:

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

Contracted Parties House

Registrar Stakeholder Group: Antonia Chu, Greg DiBiase, Prudence Malinki (first council meeting | replaced 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 (joined briefly but absent for all votes), Osvaldo Novoa, Thomas Rickert, Damon Ashcraft, Susan Payne

Non-Commercial Stakeholder Group (NCSG): Stephanie Perrin, Bruna Martins dos Santos (apologies, proxy to Stephanie Perrin), Wisdom Donkor, Tomslin Samme-Nlar (apologies, proxy to Manju Chen), 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 the IDNs EPDP

Mike Silber - Chair of the GGP

Becky Burr - ICANN Board

Karen Lentz and Dennis Chang - ICANN Org

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

Caitlin Tubergen - Policy Development Support Director (GNSO)

Saewon Lee - Policy Development Support Manager (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 - Updates to Statements of Interest

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 [Part 1](#) and [Part 2](#) on 25 October 2023 were posted on 10 November 2023.

[Minutes](#) of the GNSO Council Meeting on 16 November 2023 were posted on 01 December 2023.

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](#).

Item 3: Consent Agenda

- Confirmation of Sebastien Ducos as Chair of RDRS Standing Committee
- GNSO Review of GAC Communiqué

All councilors present voted in favor of the motion.

[Vote results](#)

Confirmation of Sebastien Ducos as Chair of RDRS Standing Committee

Action Items: On behalf of the GNSO Council, the GNSO Secretariat notifies Sebastien Ducos that the GNSO Council has confirmed him as Chair of the RDRS Standing Committee, and thanks him for his continued service.

GNSO Review of GAC Communiqué

Action Items: On behalf of the GNSO Chair, the GNSO Secretariat:

- Communicates the GNSO Council Review of ICANN78 GAC Communiqué Advice and Issues of Importance to the ICANN Board and
- Requests that the GNSO Liaison to the GAC also informs the GAC of the communication between the GNSO Council and the ICANN Board.

Item 4: COUNCIL VOTE - EPDP on Internationalized Domain Names Phase 1 Final Report

4.1 - Presentation of Motion (Manju Chen, GNSO Council liaison to the EPDP)

4.2 - Council Discussion

4.3 - Council Vote (voting threshold: Supermajority)

Manju Chen, GNSO Council Liaison to the EPDP, presented the [motion](#) resolved clause.

Susan Payne, IPC, noted that having read this detailed report, the string similarity seem very complex and is concerned that it will be difficult for future applicants to tell in advance whether their string might be similar to an existing TLD because of the comparison to tens or hundreds of variants. She hopes that a mechanism can be found in implementation to identify the variants that might impact their potential application.

Greg DiBiase, GNSO Chair, thanked Susan Payne and shared that the timeliness of a complex and detailed report is encouraging.

All Councilors present voted in favor of the motion.

[Vote Results](#)

Greg DiBiase, GNSO Chair, thanked the EPDP on IDNs team for its expeditious work.

Action Items: On behalf of the GNSO Council, the GNSO Secretariat thanks the leadership, members, participants, and liaisons to the EPDP-IDNs Team for their commitment and hard work in completing the Phase One effort of this EPDP.

Item 5: COUNCIL VOTE - GNSO Guidance Process (“GGP”) for Applicant Support Guidance Recommendation Final Report

5.1 - Introduction of Topic and Presentation of Motion (Paul McGrady, GNSO Council Liaison to the GGP)

5.2 - Council Discussion

5.3 - Council Vote (voting threshold: Supermajority)

Paul McGrady, GNSO Council Liaison to the GGP, read the resolved clause of the [motion](#) and presented [slides](#) to lay the background of GGP work. He noted that the final report was agreed to by full consensus and was delivered on time. The presentation summarized the timeline (slide 3), a summary of tasks (slide 4), public comment summary (slide 5), summary of final guidance recommendations (slide 6), and key changes following Public Comment review (slide 8).

Kurt Pritz, RySG, thanked Mike Silber for his work and noted that the GGP has some really specific recommendations for operating the Applicant Support Program, and the SubPro small team has recommendations that might be adopted in implementation. He shared a concern that these two reports seem to overlap in this area and might delay rather than expedite the process. He also asked if the question of funding was identified the right way, as the new gTLD proceeds are supposed to fund Applicant Support.

Paul McGrady, GNSO Liaison to the GGP, responded to Kurt Pritz’ comment about the interplay between the GGP Implementation recommendations and the work the Small Team Plus is doing on a policy recommendation. The Small Team’s policy recommendation is a supplemental recommendation that will go to the Board. He shared an example document of [Recommendation 17.2](#) that has relatively stable language. The GGP recommendations will go to the IRT and involve educating people about the applicant support program, how success of the program can be measured, and if there is a funding shortfall, how that can be handled. The GGP and Small Team Plus work is adjacent but not contradictory. There could be something from a small team member or the ALAC (At-Large Advisory Committee) that could be contradictory to the GGP, however, this is not a Policy decision for the Council.

Paul McGrady, GNSO Liaison to the GGP, responded to Kurt Pritz’ question about allocation of funds, he does not have an answer to that question but thought that there was a dollar amount that the Board set aside and that it was a known amount that would be budgeted for like anything else. If there is an overwhelming amount of applicants, then there are two ways to handle it: implement the ideas from the GGP or make a budget shortfall go away by having the Board allocate a larger sum for the next ASP..

Anne Aikman-Scalese, NCA, thanked Kurt Pritz for his questions and noted that it would be helpful to the IRT in particular to move forward in finalizing the GGP report and sending it over to the Board. Within the IRT right now on the Applicant Support sub track, there have been questions raised about the consistency of the IRT work and the GGP work. She also noted that ICANN establishes a budget that is a certain sum that is allocated to this item, but she has not studied the budget to know how it links together. She also noted an understanding that the budget will come from applicant fees.

Mike Silber, GGP Chair, noted that the GGP scope was narrow and the intent was to deliver a result that helps inform other discussions and deliberations and gives context to develop recommendations. His view is to take the output of the GGP and put it into context of implementation issues. The intention is to be self-funding, but ICANN cannot wait for the program to be adequately funded to provide assistance to the Applicant Support Program. The intention is that needy applicants can submit their applications for support before people can start applying for gTLDs.

This was noted in Zoom Chat by ICANN Org: Steve Chan - ICANN Org 01:23:09

Note, there is an already adopted recommendation regarding budgeting for the Applicant Support Program: Recommendation 17.12: ICANN org must develop a plan for funding the Applicant Support Program, as detailed in the Implementation Guidelines below.

Desiree Miloshevic, CPH NCA, thanked Mike Silber for addressing the question of insufficient funds.

Greg DiBiase, GNSO Chair, asked for objections regarding the council vote today on this topic.

All Councilors present voted in favor of the motion.

[Vote Results](#)

Greg DiBiase, GNSO Chair, thanked Mike Silber for all of his work and his availability on this call to address any questions.

Action Items: The GNSO Secretariat, on behalf of the Council, thanks the Chair, GNSO Council Liaison, and members of the GGP Applicant Support working group for their hard work and dedication in bringing this important project to completion.

Item 6: COUNCIL DISCUSSION - SubPro Small Team Update on Non-Adopted Recommendations

6.1 - Introduction of Topic (Paul McGrady, Small Team Plus Lead)

6.2 - Council Discussion

6.3 - Next Steps

Paul McGrady, Small Team Plus Lead, reminded all that the majority of the pending recommendations from the small team have been resolved and the Council has adopted the updated Small Team assignment form and workplan. The Small Team Plus includes others within the community and they are beginning to develop supplemental recommendation language. There is a fairly stable version of [Recommendation 17.2](#). The Small Team has moved on to additional work. ICANN org is indicating that the EBERO process will be funded in a different way rather than through the COI instrument.

Greg DiBiase, GNSO Chair, noted that after the tentative agreement on Recommendation 17.2, what is the next juncture of decision for GNSO Council.

Paul McGrady, Small Team Plus Lead, noted that it would be great to get Council approval of Recommendation 17.2, and that there was talk of having a community input session in Puerto Rico at ICANN79. It is up for discussion at the Council Leadership level on how to handle that or to accelerate the work. He noted his inclination to keep the process moving one supplemental recommendation at a time to maximize the time frame allotted, but understands if the Council needs a community consultation session in Puerto Rico.

Greg DiBiase, GNSO Chair, noted that the status quo is for the Council to vote after community consultation in Puerto Rico but that there is an alternative path to vote now.

Anne Aikman-Scalese, NCA, thanked Paul McGrady for the discussion and asked that the Recommendation 17.2 be posted to represent the excellent work the small team has done.

Greg DiBiase, GNSO Chair, noted that it has been made available to Counselors.

Action Items: GNSO Councilors to review by 02 January 2024 the current Supplemental Recommendation on Recommendation 17.2. See <https://docs.google.com/document/d/11skx7B2GrkT3zxi0IB9s8WXNGGIUSb-q/edit>

Item 7: COUNCIL DISCUSSION - EPDP on Temporary Specification Phase 1 Urgent Requests

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

7.2 – Council discussion

7.3 - Next Steps

Greg DiBiase, GNSO Chair, shared that these recommendations were adopted in May 2019 and that Recommendation 18 reads, “A separate timeline of [less than X business days] will be considered for the response to ‘Urgent’ Reasonable Disclosure Requests, those Requests for which evidence is supplied to show an immediate need for disclosure [time frame to be finalized and criteria set for Urgent requests during implementation].” ICANN org convened an IRT to discuss this upon Public Comment, several commenters expressed dissatisfaction with how Recommendation 18 was implemented. The Board has signaled discomfort around the recommendation despite previous adoption. The Council invited Becky Burr, ICANN Board, to discuss the Board’s view.

Becky Burr, ICANN Board, shared that this came to the Board’s attention in the form of a letter from the GAC at exactly the same time as the Board was reviewing the final plans for the RDRS Launch. As they were reviewing it, in the context of the RDRS where there were no Service Level Agreements (SLAs) it made no sense for ICANN to hold itself out offering something as a reasonable way to get information in response to imminent threats like imminent threats to life, injury, child trafficking and other serious issues. The Board decided that functionality should come out of the RDRS. As a matter of good practice, and in some cases, a requirement of the law, the registrar has to authenticate the requestor. This can take from 24 hours to 3 days and is not really fit for purpose in those circumstances.

Becky Burr, ICANN Board, also noted that this is an accepted policy in the implementation stage. The Board does not have a mechanism to say that this policy needs another work. The Board’s mandate is to initiate a conversation with Council regarding how to deal with this issue.

Greg DiBiase, GNSO Chair, asked if there was a mechanism for the Board to take back a recommendation and review it further, would the Board use that in this situation?

Becky Burr, ICANN Board, shared that there has been no vote and she does not want to represent what the Board would do in that situation. She repeated that the Board is sufficiently concerned that the current policy is not fit for purpose.

Greg DiBiase, GNSO Chair, asked if there is an agreement for the rest of the policy to proceed without this particular recommendation.

Becky Burr, ICANN Board, confirmed that the Board will proceed with the other elements of this policy.

Damon Ashcraft, IPC, noted the previous comment regarding law enforcement having direct ties to registrars and asked whether this information is coming from registrars or law enforcement. He shared that he lives in a jurisdiction with lots of registrars located in Arizona and that law enforcement is understaffed and is struggling to perform their duties.

Becky Burr, ICANN Board, confirmed that this is coming from registrars and registries and her personal experience working for a registry and receiving calls from United States Federal Law Enforcement, and that it generally be federal rather than provincial law enforcement.

Greg DiBiase, GNSO Chair, noted that there is a requirement in the registration agreement that registrars maintain a law enforcement contact.

Becky Burr, ICANN Board, shared that requirement in the RAA requires 24/7 monitoring. The people that monitor that functionality are not the same people that monitor WHOIS Registration Data Requests.

Susan Payne, IPC, shared her appreciation of Becky Burr sharing the Board's concern in more detail. At the moment there does not appear to be a time limit for urgent requests. She noted that the time limit does not exist to show what a reasonable response period would be, but to show that after a certain period of time this constitutes a breach of contract after which ICANN compliance can take action.

Becky Burr, ICANN Board, stated that she does not know the answer to whether or not there is a response time that is built into the requirements for the assistance for law enforcement and requested to find the answer to that question. She also noted that she has spoken to the law enforcement that she has access to and they have confirmed that they wouldn't use this, but that not everybody has a relationship with every registrar. That is the circumstance where the lack of authentication functionality becomes a big impediment.

Greg DiBiase, GNSO Chair, thanked Becky Burr and noted Susan Payne's point that taking out one recommendation could raise other concerns. He also confirmed that Becky Burr is sharing her summary of the Board's view but that there is no formal communication from the Board stating that this is an issue. He asked if the next step would be for the Board to formalize their position and write a letter to the Council requesting assistance.

Paul McGrady, NCPH NCA, affirmed that a formal communication from the Board would be helpful and asked how this is not an implementation question rather than a policy question, and how the Council can help with this matter.

Becky Burr, ICANN Board, noted that the Board is starting with the Council because it's the place to begin the conversation, not because the Board has reached the conclusion that the Council is the right entity to fix this issue. There is not a solution identified in the bylaws or in any written procedures. She confirmed that the Board can send a written description of its concerns.

Greg DiBiase, GNSO Chair, thanked Becky Burr and confirmed that something in writing would be helpful.

Action Items: The GNSO Council requested a communication from the Board with respect to its concerns with the EPDP on Temporary Specification Phase 1 Urgent Requests.

Item 8: COUNCIL DISCUSSION - Request for Reconsideration from Intellectual Property Constituency

8.1 - Introduction of Topic (Damon Ashcraft and Susan Payne, GNSO Councilors for the IPC)

8.2 - Council Discussion

8.3 - Next Steps

Greg DiBiase, GNSO Chair, noted previously discussed concerns regarding changes coming out of the CCWG-AP and noted that the IPC has filed a Request for Consideration (RFR).

Susan Payne, IPC, shared that the IPC RFR relates to the [Board decision](#) in Hamburg at ICANN78 on the way they propose to disapply access to the Accountability Mechanisms such as the Independent Review Procedure (IRP) to the Auction Proceeds Grant Program. Damon Ashcraft posted the [RFR](#) to the Council list. The RFR is not an objection to the Grant Program and has not been filed as a means to slow down the distribution of funds. It's also not an objection to the removal of the Accountability Recommendations from the decisions under the Grant Program, provided it is done in a proper manner. It

is an objection to the manner in which the Board is proposing to do those things. It is not meant to be easy to remove the right that those who engage with ICANN have to challenge by using the Accountability Mechanisms.

Greg DiBiase, GNSO Chair, thanked Susan Payne and asked if there is a deadline by which the IPC expects a response.

Damon Ashcraft, IPC, shared that the IPC is not aware of a specific date when they will hear back.

Susan Payne, IPC, shared that there are some expected time frames but there is not an outright deadline.

Greg DiBiase, GNSO Chair, shared that there were registrar concerns about signing on to the actual RFR as there are concerns about the legalistic language and the IPC perspective. It's an interesting conversation to have a letter to the extent that the Council recognizes that there are issues that warrant discussion and at a minimum requesting a response to this issue.

Stepanie Perrin, NCSG, shared kudos on all of the work on the RFR document. There is general agreement in the NCSG that the way this was done procedurally falls short of the mark and is of concern to the community. The NCSG may not always agree with the specific language of the IPC and their particular concerns may not be the same, she would like to explore the letter idea.

Anne Alkman-Scalese, NCA, shared that with respect to the IPC as a NomCom appointee she supports the idea of a draft letter from Council. She noted a concern that there is documentation in the Board meeting as potential for a proposed broader fundamental bylaws amendment.

Paul McGrady, NCPH NCA, agreed that a letter is a great idea to communicate to the Board that there are issues worthy of substantive discussion. He shared that the real victory would be if the Board reads this letter, listens to the community, and decides to re-engage in the dialogue that got cut off with this vote.

Manju Chen, NCSG, noted that both Item 7 and Item 8 are essentially the same thing – the Board wants to walk back previous decisions that it made. She shared that if Council supports Item 7 in changing that recommendation after long and difficult discussions, Item 8 also had a long and difficult discussion to reach the recommendation. She asks if Council is approving the IPC's RFR, if it is also opening another round for others to submit RFRs. During the policy making process when recommendations are approved by the Council and the Board, it should be implemented without being relegated during the implementation process or beyond.

Greg DiBiase, GNSO Chair, responded that there has not been agreement on Agenda Item 7, as it is at an interim step of sharing concerns and listening. Council's response may be that these recommendations got full Consensus and went to the Board – Council has not agreed on a disposition yet. He agreed that Manju Chen made a good point and that these agenda items align with a discussion that occurred at the GNSO Council SPS regarding what happens when the Board changes its mind on an adopted recommendation.

Kurt Pritz, RySG, supported the idea of writing a letter in a timely fashion to recommend that the Board steps back from this issue based on the fact that the community discussion was still ongoing regarding implementation. He asked if any Councilors support the Board action rescind the RFR and the IRP via a resolution rather than challenging the bylaws.

Greg DiBiase, GNSO Chair, shared that he has not heard that position to date and asked if anyone objects to a general letter stating that there are issues worthy of consideration and encouraging the Board to consider a dialogue rather than resolving this issue on a legal technicality.

After hearing no objections, **Greg DiBiase, GNSO Chair**, asked Susan Payne, Damon Ashcraft, and Paul McGrady, and Anne Aikman-Scalese to start a letter for Council to consider.

Action Items: The GNSO Council calls for volunteers to draft a letter to the Board supporting the principle of dialogue and transparency when a policy recommendation may need to be changed. The letter may recognize, as in the IPC's Request for Reconsideration (RfR), that there are issues that should be addressed, including the question of a broader fundamental Bylaws change. Volunteers: Susan Payne, Damon Ashcraft, Paul McGrady, and Anne Aikman-Scalese.

Item 9: COUNCIL DISCUSSION - Update on Key Outcomes and Action Items Coming out of GNSO Council Strategic Planning Session

9.1 - Introduction of Topic (Greg DiBiase, GNSO Council Chair)

9.2 - Council Discussion

9.3 - Next Steps

Caitlin Tubergen, ICANN org, shared that for every GNSO Council SPS, there is a detailed Outcomes and Actions Report published for reference throughout the year. The leadership is currently reviewing that and it will be circulated to Council shortly. Additionally, the Action Items reviewed on Day 3 will be added to the Master Action Item sheet for Council. She continued to review outcomes detailed in the report.

Greg DiBiase, GNSO Chair, thanked Caitlin Tubergen and encouraged Councilors to review the document when it comes out and provide any suggestions on the mailing list or at future meetings.

Action Items: Staff will compile the SPS tentative action items in the GNSO Council's Master Action Item Smartsheet and wiki for the purpose of tracking and assignment.

Item 10: ANY OTHER BUSINESS

10.1 ccNSO (Slide presentation) & GAC Liaison updates

Desiree Miloshevic, GNSO Liaison to the ccNSO, reviewed a [slide presentation](#) update regarding ccNSO activities.

Lawrence Olawale-Roberts, BC, asked if the 360 Councilor Review Process was requested by ccNSO Council members or if this was done by the Nominating Committee.

Desiree Miloshevic, GNSO Liaison to the ccNSO, shared her understanding that this is initiated by the Nominating Committee.

Action Items: GNSO Council Leadership to consider the suggestion to send a letter of congratulations relating to the results on the ccNSO elections given that this type of correspondence has not previously been provided.

10.2 Update on Diacritic Study Request

Greg DiBiase, GNSO Chair, shared that Mark Datysgeld has provided a draft to leadership and they will review this request and share the status with Council in January 2024.

Action Items: GNSO Council Leadership to review the current status of the request and report back to Council

10.3 Community Consultation on Public Interest Commitments/Registry Voluntary Commitments - Council response needed?

In the interest of time, this agenda item was combined with item 10.4 below.

10.4 Public comment period on the Draft ICANN FY25 Plans & Draft PTI FY25 Operating Plan and Budget - Council specific public comment needed?

Greg DiBiase, GNSO Chair, in the interest of time, asked Councilors to bring items 10.3 and 10.4 to their Stakeholder Groups to respond individually and will ask on the mailing list if Councilors believe that a unified response to either item is necessary.

Action Items: Council leadership to circulate an email on list regarding agenda items 10.3 and 10.4 and asking Councilors to identify whether there is a need for Council-specific response to either of the topics (or if comment is better left to individual SG/Cs).

Greg DiBiase, GNSO Chair, wished everyone Happy Holidays and Happy New Year, and thanked all for their work in 2023, and is looking forward to 2024.

Greg DiBiase, GNSO Chair, adjourned the meeting at 15:02 UTC.

The next GNSO Council meeting will take place on Thursday, 18 January 2024 at 05:00 UTC.