Minutes of the GNSO Council Meeting Part 1 21 October 2020

Agenda and Documents

Coordinated Universal Time: 11:00 UTC: https://tinyurl.com/y3nxs8rf

04:00 Los Angeles; 07:00 Washington; 12:00 London; 14:00 Moscow; 20:00 Tokyo; 22:00 Melbourne

List of attendees:
Nominating Committee Appointee (NCA): Non-Voting – Erika Mann (apologies)
Contracted Parties House
Registrar Stakeholder Group: Pam Little, Michele Neylon, Greg DiBiase
gTLD Registries Stakeholder Group: Maxim Alzoba, Keith Drazek, Sebastien Ducos
Nominating Committee Appointee (NCA): Tom Dale
Non-Contracted Parties House
Commercial Stakeholder Group (CSG): Marie Pattullo, Scott McCormick, Philippe Fouquart, Osvaldo Novoa, John McElwaine, Flip Petillion
Non-Commercial Stakeholder Group (NCSG): Juan Manuel Rojas, Elsa Saade, Tatiana Tropina, Rafik Dammak, Farell Folly, James Gannon
Nominating Committee Appointee (NCA): Carlton Samuels
GNSO Council Liaisons/Observers :
Cheryl Langdon-Orr– ALAC Liaison
Julf (Johan) Helsingius– 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
Julie Hedlund – Policy Director
Steve Chan – Senior Director
Berry Cobb – Policy Consultant
Emily Barabas – Policy Manager
Ariel Liang – Policy Senior Specialist
Caitlin Tubergen – Policy Director
Terri Agnew - Operations Support, Lead Administrator
Andrea Glandon - SOAC Collaboration Services
Nathalie Peregrine – Manager, Operations GNSO

Zoom Recording

Item 1: Administrative Matters

1.1 - Roll Call

Keith Drazek welcomed all to the GNSO Council meeting.

1.2 - Updates to Statements of Interest

James Gannon announced that he had been appointed to the PTI Board, his SOI has been updated accordingly.

1.3 - Review / Amend Agenda

The agenda was approved 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 20 August 2020 were posted on 04 Sep 2020.

Minutes of the GNSO Council meeting on the 24 September 2020 were posted on 9 October 2020.

Keith Drazek noted that eight councilors would be joining the GNSO Council for 2020-2021 and that it was an important turnover.

Item 2: Opening Remarks / Review of Projects & Action List

2.1 - The review of the Projects List and Action Item List

Berry Cobb, GNSO Policy Consultant, provided the latest updates to the Action Decision Radar (ADR) and the Project List to Council:

- New colour coding by program to build cohesion amongst the Program Management Tool, the ADR and the Projects List.
- These documents are used in conjunction with one another to allow for prioritization and reporting on activity.
- Several items on the 0 to 1 month range marker are on the Consent Agenda for today's meeting.
- On the Project List, the RPM WG co-chairs have submitted the Project Change Request (PCR) but the health of the project is still in trouble. The SubPro WG is reviewing comments from the Public Comment. Council has already voted on EPDP P2 consensus recommendations.

Keith Drazek reminded councilors of the Strategic Planning Session to come with a focus on prioritization.

Item 3: Consent Agenda

There were five items on the Consent Agenda.

- 3.1 - Action Decision Radar - Next Steps for WHOIS Conflicts Procedure Implementation Advisory Group

Action Items:

- GNSO support staff, in consultation with GNSO Council leadership, to draft communication to ICANN org. The communication is to deliver the GNSO Council request that ICANN org, in consultation with contracted parties, draft a proposal for a modification to the existing Procedure based on its past experience with both the WHOIS Conflicts Procedure and the registrar data retention waiver process.
- Following receipt of the proposal from ICANN org, the GNSO Council to consider the proposal and assess next steps, including seeking input from the community, if appropriate, given the substance of the proposal. Following the GNSO Council's consideration.
- GNSO Council to proceed with action suggested in items 3.1(3-4) after the completion of the prior two actions.

- 3.2 - Action Decision Radar - Per the rationale circulated on 11 October 2020, Council agrees to launch a call for volunteers for a small team to develop both a draft charter and an EPDP scoping document for the IDN Policy Track 2.

Action Items:

- GNSO support staff, in consultation with GNSO Council leadership, to launch a call for volunteers for a small team to develop both a draft charter and an EPDP scoping document for the IDN Policy Track 2.
- GNSO support staff to record the following members who already volunteered: Jeff Neuman, Tomslin Samme-Nlar, Maxim Alzoba, Dennis Tan, Juan Manuel Rojas, Edmon Chung, Mark Datysgeld

- 3.3 - Following the GNSO Council's consideration of the proposed immediate actions and subsequent steps as outlined here, the GNSO Council directs on EPDP Phase 2a – Legal/natural and feasibility of unique contacts; EPDP Phase 2a –Accuracy

EPDP Phase 2a – Legal/natural and feasibility of unique contacts Action Items:
- GNSO Support staff, in consultation with GNSO Council leadership, to draft communication to the ICANN groups that appointed members to the EPDP Team to:

- ○ Commence the process of confirming members availability and/or re- appointing members to work on these topics; new members are expected to be confirmed by 15 November.
  - ○ Start developing proposals to address these topics, factoring in deliberations to date, that will allow the EPDP Team to kickstart deliberations on these topics when it reconvenes.
- GNSO Support staff, in consultation with GNSO Council leadership, develop and publish a call for Expressions of Interest to identify a new Chair for EPDP Phase 2A.

Accuracy Action Items:
- GNSO Support staff, in consultation with GNSO Council leadership, to draft communication to ICANN SO/AC/SG/Cs which requests:
  - ○ Interested groups to start considering members that have relevant knowledge and expertise that should join this effort once the scoping team launches.
  - ○ Interested groups to start compiling relevant information and suggestions that would allow kickstarting the discussions on 1. and 2. once the scoping team is formed (see here for resources already identified).
- GNSO support staff, in consultation with GNSO Council leadership, to send GNSO Council request to ICANN org for a briefing document that outlines both (i) existing accuracy requirements and programs and (ii) the corresponding impact that GDPR has had on implementing / enforcing these requirements and programs. The document, once delivered, will be provided to the scoping team to inform its deliberations.

- 3.4 - Confirmation of the Recommendations Report to the ICANN Board regarding adoption of recommendations 1-22 contained in the Final Report from the EPDP Temporary Specification for gTLD Registration Data – Phase 2.

Action Item:

- GNSO Support Staff to work with Council leadership on transmittal letter of the EPDP Phase 2 Recommendations Report, including a request to the ICANN Board to form a small team to outline the proposed modalities of the consultation. The transmittal letter will be sent as a cover letter for the EPDP Phase 2 Recommendations Report.

- 3.5 - Appointment of the GNSO Liaison to the Governmental Advisory Committee (motion)

Action Item:

- The GNSO Council Leadership Team to coordinate with Jeffrey Neuman as well as the GAC Leadership Team and GAC Secretariat on next steps and the successful implementation of the GAC Liaison role.

Councilors present on the call voted unanimously in favour of the motion.

Vote results

Action Items:

- GNSO support staff, in consultation with GNSO Council leadership, to draft communication to ICANN org. The communication is to deliver the GNSO Council request that ICANN org, in consultation with contracted parties, draft a proposal for a modification to the existing Procedure based on its past experience with both the WHOIS Conflicts Procedure and the registrar data retention waiver process.
- Following receipt of the proposal from ICANN org, the GNSO Council to consider the proposal and assess next steps, including seeking input from the community, if appropriate, given the substance of the proposal. Following the GNSO Council's consideration.
- GNSO Council to proceed with action suggested in items 3.1(3-4) after the completion of the prior two actions.

Item 4: COUNCIL DISCUSSION - Discuss Draft Motion to Affirm intent of EPDP Phase 1 Recommendation 7 and Initiation of the Thick WHOIS Transition Policy EPDP

Pam Little, Vice Chair, chaired this item, with Rafik Dammak, Vice Chair, Keith Drazek having recused himself from the discussion. She reminded councilors that during the September meeting, Sebastien Ducos provided a report to Council about the disagreement within the IRT which persists. The issue has been sent back to Council and covers two recommendations: 7 and 27. Recommendation 7 (Rec 7) deals with the transfer of registration data from registrars to registries. The ICANN Board also raised concerns about the impact on the Thick Whois transition policy as well as the fact the EPDP 2 Final Report did not explicitly repeal Thick Whois. The Council small team tasked with the issue referred to existing GNSO guidelines and principles for direction in this unique situation. **Pam Little** added that for her, Council's only role should be one of providing guidance to the IRT about the intent of the recommendation.The draft motion put forward by the small team intends to confirm intent of the EPDP 1 recommendation and to initiate a PDP to review the thick Whois transition policy. The small team had diverging opinions and this is why the draft motion is being presented for discussion, instead of voting. The draft motion also provides a rationale for why Council is making this decision.

Marie Pattullo, BC Councilor, agreed that the Council's role is to manage the process and not relitigate substantive issues. She also added that the diverging views visible in the Council small team reflected those existing in the IRT. The BC disagrees with the need for a PDP, given that from their perspective, a legal basis exists. Marie also expressed concern at the risk of repealing a consensus policy.

John McElwaine, IPC Councilor, echo-ed Marie and added that the impasse was not going to be solved by an interpretation of legal basis, but by discussing what the outcome would be of determining that a legal basis would include requiring the transfer of thick whois data elements.

Pam Little mentioned that the issue here was re-visiting a consensus policy, approved by both the GNSO Council and ICANN Board, with ICANN Org seemingly driving the policy language within the IRT in a way which is inconsistent with the actual recommendation.

Rafik Dammak agreed with Pam and emphasized that the GNSO Council is not the right place to be re-working Rec 7 but focus on the process management and provide guidance to the IRT to move away from the impasse. In addition to this, there is the work to be done on responding to ICANN Board's main question on thick whois. Any delay to this will further delay the IRT from finalizing the implementation of a EPDP P1 recommendations.

Michele Neylon expressed his frustration at the fact councilors were still in disagreement on the topic. He reminded councilors that ICANN policies cannot break the law and that it was raised very early on that ICANN contracts would need to be revised. EPDP P1 recommendations on thick whois data and transfer of it are very clear. If there is a legal basis, then the work should be allowed to move forward without wasting time focussing on small issues. Thick Whois policy is consensus policy as are the EPDP recommendations, the focus needs to be on the conflict between the two, and that only.

Pam Little added that the Board has adopted the policy recommendations and directed ICANN org to implement them but in the course of a policy implementation, ICANN Org is accountable to the GNSO Council. If the implementation is inconsistent with the policy recommendation, then the GNSO Council has a role to play in the implementation process.

Keith Drazek thanked the small team for their efforts and also Sebastien Ducos for this work as liaison to the EPDP IRT. He then added that the next step would be to publish the proposed language for public comment and expressed his agreement with the points raised by Pam.

Pam Little confirmed that she intends to submit the motion for the November 2020 GNSO Council meeting to avoid the IRT work being delayed any further.

Action Item:
- GNSO Support Staff to include the item of EPDP Phase 1 Recommendation 7 in the agenda of the November 2020 Council meeting.

Item 5: COUNCIL DISCUSSION - Draft Operational Design Phase for gTLD Policy Implementation
Keith Drazek reminded councilors ICANN Org had first introduced the Operational Design Phase (ODP) to the SOAC Chairs for an initial preview and discussion, the document was then circulated to the Council

mailing list on the 5th October 2020. The ODP will have implications in terms of timing and process, and the GNSO Council will need to ensure it doesn't impact consensus policy recommendations.

Rafik Dammak mentioned that this discussion was crucial and the GNSO Council needed to have a small team work on a Council response to this paper, without hindering SG/C discussion and input. The GNSO Council would take the lead on how to integrate this to the PDP itself, with the help of the PDP manual and other documents. He encouraged early community feedback as it is always more effective. The ODP could be embedded in the Working Group Guidelines which did not previously cover cost, resource and human rights assessments. Whilst this will be a helpful endeavour for the Board, it will also help expedite the process which is in the GNSO Council's interest.

Tatiana Tropina expressed her uncertainty about the rationale for the document which is presented by ICANN org as increasing transparency on Board deliberations but she upon reading saw a threat to the GNSO Council role as process manager. She added that stronger safeguards should be added to prevent further negotiations. To go ahead, the design phase needs to be perfectly streamlined and not become an obstacle.

Philippe Fouquart agreed with the idea of a Council small team to work on the topic. The ISPCP recognized that transparency is a good thing but that some elements of the ODP could overlap with the GNSO Council PDP management role. With deadline driven initiatives such as EPDP, there will be other policy issues to discuss, and thus rigour will be needed to ensure these issues remain under Council's remit.

Action Item:

- A GNSO Council small team to develop input/feedback for the concept of the Operational Design Phase (ODP) as well as the substance of the ODP paper. The following Councilors already volunteered: Jeff Neuman, Maxim Alzoba, Tatiana Tropina, Kurt Pritz, Juan Manuel Rojas, Tom Dale

Item 6: COUNCIL DISCUSSION - Board Consultation Regarding Questions Surrounding the financial Sustainability of the System for Standardized Access and Disclosure

Keith Drazek reminded councilors that Recommendation 1b of the EPDP P2 Final Report, which Council approved on the 24 September 2020, approved the SSAD package while noting questions surrounding financial sustainability of SSAD and concerns expressed in minority statements. The GNSO Council requested a consultation with the ICANN Board as part of the delivery of the GNSO Council recommendations report to discuss these issues, one of which being whether a further cost benefit analysis should be conducted before ICANN Board considers all SSAD related recommendations for

adoption. **Keith** added that there had been questions raised by Council regarding whether users of the system would find sufficient value versus the potential cost of building and sustaining it.

Michele Neylon noted that looking at financial sustainability and resources was excellent and necessary. He encouraged the ICANN Board to consider all aspects and assessments prior to signing off on any policy recommendation given the sources of revenue are registries and registrars and ultimately registrants and other users of domains.

Marie Pattullo mentioned that Alex Deacon, BC, has done scoping work on a Salesforce model for this already on the basis that ICANN is already using the tool as a ticketing system.

Keith Drazek then asked councilors to review the transmittal [letter](#) in the aim of clarifying the Council's interest in the next steps on the topic.

Maxim Alzoba disagreed with using Salesforce as his registry experience raised flexibility issues with the tool, particularly regarding access levels.

Action Items:

- GNSO support staff to include the item of financial sustainability of the SSAD topic in the Council working session agenda during SPS.
- GNSO Council to form a small team to outline the proposed modalities of the consultation in coordination with the ICANN Board (see action item above).

Item 7: COUNCIL DISCUSSION - ADR Item - Council to Consider Delay of the Request for the Policy Status Report for the Expiration Policy(ies)

Keith Drazek asked that councilors take this as an opportunity to consider when to request a policy status report to conduct a review of expiration policies, the expired domain deletion policy (EDDP) and the expired registration recovery policy (ERRP). Taking into account current workload and exceptional circumstances, **Keith Drazek** recommended Council request the policy status reports for these two consensus policies be delayed by 24 months, assuming no substantive issues arise during that time.

Berry Cobb added that this was key to the prioritization of GNSO Council work and that given there have been no issues in relation to these policies, the delay request made sense.

James Gannon and **Rafik Dammak** approved of the initiative which allows the Council to focus on bigger topics.

Pam Little agreed in the light of the Council initiating a PDP on the transfer policy shortly which would take up registrar time and effort.

Item 8: ANY OTHER BUSINESS

8.1 Open Mic

Jeffrey Neuman noted that he approved of the ODP which he likened to a business plan rather than a threat to policy making. The argument in favour being that policy participants are not the best qualified to make assessments on staff resources for example. He appreciated ICANN Org opening up and enabling early community input on those topics whilst acknowledging safeguards needed to be put into place.

Amr Elsadr, as former member of the Thick Whois PDP WG, asked that the GNSO Council take into account recommendation 3 of the Thick Whois PDP WG because of the nature of the recommendation on privacy and data protection law.

Alex Deacon, as former member of the EPDP P1 and current member of EPDP IRT, raised that the current impasse is procedural with a conflict between two consensus policies, both correct, both of them Board approved. He suggested a PDP be created to resolve the issue.

8.2 Farewell to outgoing councilors

Keith Drazek, outgoing Chair, thanked all councilors, Rafik Dammak and Pam Little in particular for their contribution to the Council leadership team and the staff support.

Pam Little praised Keith for his chair neutrality, his promotion of consensus and ensuring all views are heard. She thanked Rafik for his contributions as. amongst others, GNSO Council liaison to the EPDP, and leading PDP3.0. She commended Michele Neylon, outgoing RrSG councilor for his candour and keeping the RrSG updated on council activities. She also thanked staff for their extraordinary effort in supporting the Council.

Rafik Dammak talked about what a pleasure it had been to work with both Keith and Pam, and that despite the early hours, he had enjoyed the Council preparation meetings.

John McElwaine thanked all outgoing councilors, adding how welcoming the 2019-2020 councilors had been and how impressed he had been with the collegiality within Council. He expressed specific thanks to Keith and Rafik for their leadership.

Philippe Fouquart added that it was a tremendous shame these farewells could not be done face-to-face and that he looked forward immensely to meeting up in a physical set-up shortly.

Michele Neylon added his thanks to Pam's regarding Keith's unwavering neutrality as Chair, and commended both Pam and Rafik for their leadership despite considerable time zone issues.

Elsa Saade, outgoing NCSG councilor, thanked Rafik for his mentorship, Tatiana for her friendship, James and Amr Elsadr for his support. She also expressed thanks to staff support, and to Keith and Pam. She then added: "I'll leave saying that I surely hope we commit to acting in good faith, and I hope that the GNSO council's role will remain clear and steady in managing policy and not going into nitty gritty substance discussions (something I spent 80% of my time on council pushing for)."

James Gannon, outgoing NCSG councilor, will remain in ICANN with a seat on the PTI Board, and praised the GNSO Council for its work, and Keith for his guidance over the last few years.

Keith Drazek thanked Pam for running this last portion of the meeting, and staff for pulling together the slide deck. He added that he was supremely confident in the next GNSO Council but asked that all councilors be involved, engaged and volunteer to the work effort, as input is key. He acknowledged the effort was considerable given the lack of face-to-face opportunities. He thanked all for their friendship, professionalism and good work over the past few years.

Keith Drazek adjourned the meeting at 13:04 UTC on Wednesday 21 October 2020