

Minutes of the GNSO Council Meeting 24 September 2020

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

Coordinated Universal Time: 12:00 UTC: <https://tinyurl.com/y3a7uqjh>

05:00 Los Angeles; 08:00 Washington DC; 13:00 London; 15:00 Moscow; 21:00 Tokyo; 22:00 Melbourne

List of attendees:

Nominating Committee Appointee (NCA): Non-Voting – Erika Mann

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 ((absent for first vote, present for the others), Philippe Fouquart, Osvaldo Novoa, John McElwaine, Flip Petillion

Non-Commercial Stakeholder Group (NCSG): Juan Manuel Rojas, Elsa Saade (apology, proxy to James Gannon), Tatiana Tropina, Rafik Dammak, Farell Folly, James Gannon

Nominating Committee Appointee (NCA): Carlton Samuels (absent for first vote, present for the others)

GNSO Council Liaisons/Observers :

Cheryl Langdon-Orr– ALAC Liaison

Julf (Johan) Helsingius– GNSO liaison to the GAC

Maarten Simon – ccNSO observer

Guests: Becky Burr, Matthew Shears (GNSO-appointed Board members), Philip Corwin and Brian Beckham (RPM co-chairs)

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 – Policy Director

Berry Cobb – Policy Consultant

Emily Barabas – Policy Manager

Ariel Liang – Policy Support Specialist

Caitlin Tubergen – Policy Senior Manager

Terri Agnew - Operations Support, Lead Administrator

Andrea Glandon - SOAC Collaboration Services

Nathalie Peregrine – Manager, Operations GNSO

[Audio Recording](#)

[Transcript](#)

Item 1: Administrative Matters

1.1 - Roll Call

1.2 - Updates to Statements of Interest

There were no updates to Statements of Interest.

1.3 - Review / Amend Agenda

The agenda was approved as presented with flexibility for an extra 30 minutes to be added to the scheduled call duration to allow for Stakeholder Group and Constituency statements (item 4) to be shared on the call.

1.4 - Note the status of minutes for the previous Council meetings per the GNSO Operating Procedures:

[Minutes](#) of the GNSO Council meeting on 23 July 2020 were posted on 12 Aug 2020

[Minutes](#) of the GNSO Council meeting on 20 August 2020 were posted on 04 Sep 2020.

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

2.1 - In the interest of time, the review of the [Projects List](#) and [Action Item List](#) took place over the email list.

Item 3: Consent Agenda

There were two items on the Consent Agenda.

- 3.1 - [Action Decision Radar](#) decision - In respect of Recommendation 5 From IGO-INGO Access to Curative Rights Protection Mechanisms Final Report and in accordance with the [Addendum\[gns0.icann.org\]](#) to the RPMs Charter adopted by the Council on 23 January 2020, the Council shall initiate both the Expressions of Interest process to identify a single, qualified Work Track Chair and issue a call for Members and Observers to join the IGO Work Track
- 3.2 - Approval of the 2020 Customer Standing Committee (CSC) Slate - In accordance with Section 17.2 (d) of the ICANN Bylaw and per the CSC Charter, the full membership of the CSC

must be approved by the GNSO Council. The Council approves the full slate of members and liaisons, noting that the SSAC has declined to appoint a liaison.

The full CSC membership can be found listed [here](#)

Councilors present on the call (Carlton Samuels and Scott McCormick joined the call once the vote closed) voted unanimously in favour of the motion.

[Vote results](#)

Action Items:

- ICANN Staff to publish the Expressions of Interest to identify a single, qualified IGO Work Track Chair on the ICANN website, SO/AC/SG/C/RALO leadership list, community leadership digest, and other relevant ICANN communication channels. GNSO Council leadership to review the draft developed by staff.
- ICANN Staff to distribute the call for Members and Observers to join the IGO Work Track on the ICANN website, SO/AC/SG/C/RALO leadership list, community leadership digest, and other relevant ICANN communication channels. GNSO Council leadership to review the draft developed by staff.

Item 4: COUNCIL VOTE - Adoption of the Final Report of the Expedited PDP (EPDP) on the Temporary Specification Phase 2

Rafik Dammak, seconded by **Michele Neylon**, submitted a [motion](#) for Council to approve the EPDP Phase 2 Final Report and recommendations.

WHEREAS

1. On [17 May 2018](#), the ICANN Board adopted the [Temporary Specification for gTLD Registration Data](#) (“Temporary Specification”) pursuant to the procedures in the Registry Agreement and Registrar Accreditation Agreement concerning the establishment of Temporary Policies;
2. Following the adoption of the Temporary Specification, and per the procedure for Temporary Policies as outlined in the Registry Agreement and Registrar Accreditation Agreement, a Consensus Policy development process as set forth in ICANN’s Bylaws needs to be initiated immediately and completed within a one-year time period from the implementation effective date ([25 May 2018](#)) of the Temporary Specification;
3. The GNSO Council has had a number of discussions about next steps to clarify issues around scope, timing and expectations, including a meeting between the GNSO Stakeholder Group and Constituency Chairs on [21 May 2018](#), the Council meeting on [24 May 2018](#), a meeting between the ICANN Board and the GNSO Council on [5 June 2018](#) and an extraordinary GNSO Council meeting on [12 June 2018](#);
4. Subsequently, the GNSO Council agreed to form a drafting team, consisting of Council leadership and interested Council members, to develop the EPDP Initiation Request and EPDP Team Charter. The drafting team submitted the proposed EPDP Initiation Request and EPDP Team Charter to the GNSO Council on 19 July 2018;

5. The GNSO Council approved the EPDP Initiation Request (<https://gns0.icann.org/sites/default/files/file/field-file-attach/temp-spec-gtld-rd-epdp-initiation-request-19jul18-en.pdf>) and the EPDP Team Charter (<https://gns0.icann.org/sites/default/files/file/field-file-attach/temp-spec-gtld-rd-epdp-19jul18-en.pdf>) on 19 July 2018;
6. The EPDP Team divided the work in two phases; Phase 1 completed with the adoption of the EPDP Phase 1 Final Report on 4 March 2019, at which point the GNSO Council indicated its non-objection, as required per the EPDP Team Charter, for the EPDP Team to commence work on a System for Standardized Access/Disclosure to Non-Public Registration Data (“SSAD”) as well as other topics identified in Phase 2 of the Charter and/or carried over from Phase 1 (priority 2 items);
7. The EPDP Team commenced its deliberations on Phase 2 on 2 May 2019 with the development of its work plan (see <https://community.icann.org/x/6BdlBg>);
8. The EPDP has followed the prescribed EPDP steps as stated in the Bylaws, including the publication of an Initial Report on 7 February 2020 for public comment (see <https://www.icann.org/public-comments/epdp-phase-2-initial-2020-02-07-en>) as well as an addendum to the Initial Report on 26 March 2020 (<https://www.icann.org/public-comments/epdp-phase-2-addendum-2020-03-26-en>, resulting in a Final Report delivered on 31 July 2020 with an [updated version](#) containing all minority statements [submitted](#) on 26 August 2020;
9. Eleven (11) recommendations obtained a full consensus designation (#1, 2, 3, 4, 11, 13, 15, 16, 17, 19 and 21); Three (3) recommendations obtained a consensus designation (#7, 20 and 21); Six (6) recommendations obtained a strong support but significant opposition designation (#5, 8, 9, 10, 12 and 18), and; Two (2) recommendations obtained a divergence designation (#6 & 14);
10. The EPDP Team has indicated that it considers all SSAD-related recommendations interdependent, and, as a result, recommends SSAD-related recommendations (Recommendations #1 – 18) be considered as one package by the GNSO Council and subsequently the ICANN Board;
11. The GNSO Council has reviewed and discussed the Final Report and its recommendations, including during a [dedicated webinar](#) on the topic.

RESOLVED

1. The GNSO Council:
 - a. Adopts and recommends to the ICANN Board of Directors the adoption of recommendations #1 – 18 that establish a System for Standardized Access/Disclosure to Non-Public Registration Data;
 - b. *[if 1a. is adopted]* Noting some of the questions surrounding the financial sustainability of SSAD and some of the concerns expressed within the different minority statements, the GNSO Council requests a consultation with the ICANN Board as part of the delivery of the GNSO Council Recommendations Report to the ICANN Board to discuss these issues, including whether a further cost-benefit analysis should be conducted before the ICANN Board considers all SSAD-related recommendations for adoption.
2. The GNSO Council adopts and recommends to the ICANN Board of Directors the adoption of recommendations #19 – 22 that address a number of priority 2 topics.

3. The GNSO Council directs ICANN org to convene an Implementation Review Team to work on the implementation of these recommendations. If acceptable to the IRT as well as ICANN org, the GNSO Council has no objection if the existing EPDP Phase 1 Implementation Review Team would take on this task, recognizing that there may be a need to refresh membership as well as align the implementation with any work that may remain from the Phase 1 implementation. The Implementation Review Team will be tasked with assisting ICANN org in developing the implementation details for the EPDP recommendations, evaluating the proposed implementation of the recommendations as approved by the Board, and working with ICANN staff to ensure that the resultant implementation conforms to the intent of the approved recommendations. The Implementation Review Team shall operate in accordance with the Implementation Review Team Principles and Guidance approved by the GNSO Council in June 2015.

4. The GNSO Council extends its sincere appreciation to the Chair, Janis Karklins, Vice Chair, Rafik Dammak, EPDP Team members, alternates and support staff of the EPDP Team for their tireless efforts to deliver this Final Report, recognizing that the Council may direct that some further work is undertaken on a number of priority 2 items that were not addressed in the Phase 2 Final Report.

Rafik Dammak, GNSO Council Liaison to the EPDP and interim Phase 2 Chair, read out the resolved clauses of the motion. **Keith Drazek** clarified that the vote on the motion would take place in the form of three separate votes concerning different items of the motion:

- Vote 1: on resolved clauses 1a and 1b
- Vote 2: on resolved clause 2
- Vote 3: on remaining items: whereas clauses, and resolved clauses 3 and 4.

Keith Drazek reminded councilors that they had received the EPDP Phase 2 Final Report in July 2020, and that ensuing minority statements had been received by the end of August 2020. He also informed Council that all Stakeholder Group (SG) and Constituency (C) statements on the EPDP Phase 2 Final Report could be shared with Council at the end of the vote.

Vote 1: BC and IPC councilors voted against the resolved clauses 1a and 1b. The vote passed with 100% support in the Contracted Party House (CPH) and 69,23% support in the Non Contracted Party House (NCPH).

Vote 2 and 3: Both passed with 100% support in both houses.

[Vote results](#)

The following statements were then shared on the GNSO Council call:

IPC Statement: <https://gns0.icann.org/en/meetings/ipc-statement-epdp-2-final-report-24sep20-en.pdf>

RySG Statement: <https://gns0.icann.org/en/meetings/rysg-statement-epdp-2-final-report-24sep20-en.pdf>

ISPCP Statement:

<https://gns0.icann.org/en/meetings/ispcp-statement-epdp-2-final-report-24sep20-en.pdf>

BC Statement: <https://gns0.icann.org/en/meetings/bc-statement-epdp-2-final-report-24sep20-en.pdf>

RrSG Statement: <https://gnso.icann.org/en/meetings/rrsg-statement-epdp-2-final-report-24sep20-en.pdf>

ALAC Statement:

<https://gnso.icann.org/sites/default/files/file/field-file-attach/alac-statement-epdp-2-final-report-24sep20-en.pdf>

Rafik Dammak Statement:

<https://gnso.icann.org/en/meetings/dammak-statement-epdp-2-final-report-24sep20-en.pdf>

Keith Drazek thanked all EPDP members and participants as well as the support groups behind them for their efforts in the difficult and challenging process. He also acknowledged the work remaining to be accomplished when engaging with ICANN Board on questions of cost benefit analysis and any other concerns the Board may have about approving the recommendations and/or moving into a design phase or implementation.

Action Items:

- ICANN Staff to prepare the draft recommendations report for the ICANN Board, to be considered and adopted by the GNSO Council, focusing on items that the GNSO Council agreed on.
- ICANN Staff to inform GDS that the GNSO Council directs ICANN Org to convene the Implementation Review team for the EPDP Phase 2, noting that the GNSO Council has no objection if the existing EPDP Phase 1 Implementation Review Team would take on this task, recognizing that there may be a need to refresh membership as well as align the implementation with any work that may remain from the Phase 1 implementation.

Item 5: COUNCIL DISCUSSION - Project Change Request (PCR) from the Review of All Rights Protection Mechanisms (RPMs) in All gTLDs PDP WG

John McElwaine, GNSO Council Liaison to the RPM WG presented the latest WG updates and PCR submitted by the RPM co-chairs, two of whom (Phil Corwin and Brian Beckham) were present on the call (slide deck on the [wiki agenda page](#)). He informed councilors that since the last PCR submitted by the RPM WG, WG members had been working hard to meet the timeline of producing the Final Report by mid-October 2020. The Public Comment triggered many comments on the Initial Report however, and the Public Comment period was extended due to Covid-19. Two sub-teams were created to work on issues coming out of the comments. Despite an increased number of calls, including weekly leadership conference calls, a 30 or 40 day extension will be necessary with the aim being to submit the Final Report to Council by the end of November

Brian Beckham, RPM co-chair, notified Council that the extension requested was a small one but albeit necessary for the WG to complete its work. He reminded councilors that this was phase 1 of a two-phased PDP and that Council input would be required on substantive matters during phase 2, preferably prior to the chartering stage.

Keith Drazek concurred adding that a review of the charter with incorporation of PDP 3.0 considerations would be necessary.

Philip Corwin, RPM co-chair, added that the WG was working extremely hard, and he supported the review of the charter for phase 2, as many phase 1 issues were triggered by confusions in the charter.

James Gannon mentioned that the PCR submitted in spring 2020 had also been presented as being the last extension needed to complete the WG's work, and that the most recent PCR had to be the last one submitted by the WG.

Keith Drazek agreed with James and added that seeing the co-chairs work collaboratively was encouraging and advised WG members against reopening issues. He added that should there be further delays, Council could resort to certain measures such as assigning the GNSO Council liaison to the RPM WG, John McElwaine, to the leadership team.

Rafik Dammak urged the co-chairs to show strong leadership in this final push to completion and avoid reopening closed topics in this last stage of the RPM PDP.

Both co-chairs stated on the call that the new deadline would be met.

Action Item:

- Keith Drazek to communicate to the RPM Co-Chairs regarding the Council approval of the PCR for the last chance and require the Co-Chairs to provide their assurance to carry out their commitments, including follow up with Kathy Kleiman via email.

Item 6: COUNCIL DISCUSSION - Expedited PDP (EPDP) on the Temporary Specification Phase 2

Proposed Next Steps for Priority 2 Items:

Keith Drazek provided an update to Council on the activities of the Council small team tasked with working on EPDP Phase 2 Priority 2 items' next steps. Priority 2 items included the legal vs natural question as well as data accuracy.

Rafik Dammak provided further explanation on [next steps](#): Track 1 will cover legal vs natural persons as well as the feasibility of unique contacts to have a uniform anonymized email address. Track 2 will cover data accuracy. The next steps document outlines what immediate steps can be taken by Council and what are the remaining subsequent actions.

An immediate step for Track 1 would be for Council to inform the EPDP team and the supporting groups that the team will be reconvened again so that member availability can be confirmed and for groups to

begin discussions internally as soon as possible. A next step would be to have an Expression of interest for a leadership position circulated promptly to allow for work to commence swiftly. The Track 1 members would then have three months to complete the work or report back to the GNSO Council about the status of deliberations and likelihood of having consensus recommendations.

An immediate step for Track 2 will be to form a Scoping Team consisting of volunteers from GNSO SGs as well as interested SOs and ACs. This team will be tasked with facilitating community understanding of the issue; assisting in scoping and defining the issue; gathering support for the request of an Issue Report, and/or; serving as a means to gather additional data and/or information before a request [for an Issue Report] is submitted. For this, there will be the need to approach SOs and ACs rapidly to contribute to the membership constitution. The team will also request that ICANN Org develop a briefing document outlining existing accuracy requirements and programs, as well as their impacts. The Council will determine the deadline by which the Scoping Team will deliver its findings.

Keith Drazek pointed out that this proposal had been circulated on the Council mailing list and had met no objection.

Marie Pattullo expressed the BC's satisfaction that the accuracy topic was to be worked on rapidly. The BC already has a slate of potential volunteers ready to participate. She insisted that beginning the work as soon as possible was key.

Action item:

- Staff to prepare a consent agenda item on the EPDP priority 2 topic for the October Council meeting by the document deadline.

Item 7: COUNCIL DISCUSSION - Implementation Concerns for EPDP Phase 1 Recommendation 7, related to the Thick WHOIS Transition Policy

Keith Drazek, having recused himself from this topic, handed the item over to **Rafik Dammak** and **Pam Little**.

Sebastien Ducos, GNSO Council liaison to the EPDP 1 Implementation Review Team (IRT) provided a quick followup to the report he [sent](#) to the Council mailing list early October 2020. Recommendation 7 regarded the transfer of data from registrars to registries, the notion being that there was a set of data containing data about the domain itself (expiry date etc) and additional information about contact details of registrant and admin contact attached. The text of Rec 7 which created friction was "... provided an appropriate legal basis exists and data processing agreement is in place".

There are several groups within the IRT. The first group, mainly structured with members of the CPH believes that the pre-existence of an appropriate legal basis is not set for everybody all the time, and some IRT members felt that this wording should be transcribed into policy for each TLD individually on a

case by case basis to be reviewed and assessed for that legal basis and determine if data transfer is required or not. A second group, mostly IPC and BC members, holds the view that the legal basis exists in all cases for all TLDs. Part of it is underpinned by the Thick Whois Transition Policy and part of it is underpinned by the Bird & Bird report on that policy. Whilst they don't have any formal objections to the wording, they want to make sure that everybody understands that legal basis exists in all cases that the data processing agreement which is currently being discussed between CPH and ICANN Org should reflect that. The third group, the IPT, the ICANN Org part of the IRT, is of the view that legal basis exists in all cases and that therefore the text relating to it can be removed.

There are strongly entrenched groups and therefore the IRT is submitting the following points to Council: If the Council believes there is no conflict between Rec 7 and the Thick Whois Transition Policy then the CPH will agree to leave the sentence in place, the BC and IPC will want the Council to explain to the IRT what the consequences are to that lack of conflict. If the Council believes there is a conflict between Rec 7 and Thick Whois, both parties are asking for the Council to provide direction as to the perceived conflict and how to resolve it.

Michele Neylon asked why the IPC would argue that there is a pre-existing legal basis in a policy, as a policy is just a policy.

Sebastien Ducos clarified that the IPC is not opposed to the wording but wants to be sure that it is not an open gate to further litigation and interpretation.

Marie Pattullo, on behalf of the BC, added that if there is no legal basis, as per the CPH, then including the wording "provided a legal basis exists" will have a direct impact on Thick Whois policy. The ICANN Board has been clear that the IRT must avoid having any kind of impact on this consensus policy.

Pam Little proposed that the Council small team (Marie Pattullo, Flip Petillion, John McElwaine, Rafik Dammak and Pam Little) which had been convened in May 2020 to draft a [response](#) to the [letter](#) from the Board, reconvene to work on a response to the IRT's questions and the Council expedites the Thick Whois Transition Policy review as envisaged by the EPDP Phase 1 recommendation 27.

Action item:

- The Council Small Team (consisting of Marie, Rafik, Pam, John, Philippe, Flip, and Maxim) to discuss and address the next steps, including: 1) develop a Council position paper regarding the path forward for expediting the Thick WHOIS review as envisaged by the EPDP Phase 1 recommendation 27; 2) develop a formal response to the IRT (to be communicated by Sebastien); and 3) prepare communication to the ICANN Board regarding expediting the Thick WHOIS review.

Item 8: COUNCIL DISCUSSION - Q&A with GNSO Chair Candidate

Philippe Fouquart confirmed that he would be standing for GNSO Chair, and added that doing so in a virtual setting was unfortunate but obviously necessary. He then provided a quick summary of the content of his [Candidate Statement](#).

Sebastien Ducos asked for Philippe Fouquart's opinion on how to add efficiency to the IRT process.

Philippe Fouquart confirmed that work was to be done on the relationship between PDPs and IRTs. The EPDP has increased the difficulty of the relationship and that may have been overlooked in the process. Anything deadline driven is meant to lead to a recursive process where implementation would lead to the revision of the policy itself. The PDP tends to leave several stones unturned, it's a by-product of the PDP. Especially here, the EPDP was uncharted territory, Further work on PDP3.0 will be needed on the matter to improve on the chartering of the PDP or EPDP. This could take place during the 2020 Strategic Planning Session.

Rafik Dammak asked about getting incoming councilors onboard and ensuring the continuity of the work to date, whilst avoiding reinventing the wheel and revisiting prior discussions.

Philippe Fouquart confirmed that it was going to be a challenge, especially with the impossibility of meeting face-to-face. Regarding onboarding of incoming councilors, he would like to have small topic teams within the Council to be able to accomplish work in between Council monthly calls. To the question of continuity, he would like to continue to benefit from the experience of outgoing councilors to ensure history is taken into account adequately.

Keith Drazek then touched about the GNSO Chair election process as it will be held virtually during ICANN69. There are two options: a vote by acclamation with a roll call vote and an email vote.

Action Item:

- Keith to email the GNSO Council regarding the recommendation of using the roll-call vote method for confirming the next GNSO Chair.

Item 9: ANY OTHER BUSINESS

- **9.1 - Preparation for ICANN69 bilateral meetings with the ICANN Board, ccNSO, GAC, and SSAC.**

Keith Drazek reminded councilors of the need to agree on discussion topics and asked that a small group of councilors volunteer to draft the conversation subjects. Staff reminded councilors about the need to register to the ICANN69 meeting website to access the schedule.

- **9.2 - Strategic Planning Session (SPS)**

Pam Little informed councilors that the SPS would not be taking place face-to-face in January as has been the case recently. It will be held virtually and shortly after the ICANN69 meeting. The format will therefore be slightly different, and a survey on the topic has been circulated to the new Council 2020 -2021 to gather input. Pam Little and Philippe Fouquart, chair nominee, are taking the lead on SPS planning but welcome other councilors to contribute to the effort.

Action item

- Staff to send the proposed topics for ICANN69 bilateral meetings for Council leadership's review before distribution on the Council list.

Keith Drazek adjourned the meeting at 14:32 UTC on Thursday 24 August 2020