Final Proposed Agenda 2023-11-16

Draft GNSO Council Agenda 16 November 2023

Please note that all documents referenced in the agenda have been gathered on a Wiki page for convenience and easier access: https://community.icann.org/x/fIJME.

This agenda was established according to the GNSO Operating Procedures v3.5, updated on 15 March 2023.

For convenience:
- An excerpt of the ICANN Bylaws defining the voting thresholds is provided in Appendix 1 at the end of this agenda.
- An excerpt from the Council Operating Procedures defining the absentee voting procedures is provided in Appendix 2 at the end of this agenda.

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)

GNSO Council Meeting Remote Participation: https://icann.zoom.us/j/97891627902?pwd=RURCTitiNEVwd2UySEk1QkRESmlFZz09

Councilors should notify the GNSO Secretariat in advance if they will not be able to attend and/or need a dial out call.

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Item 1: Administrative Matters (5 minutes)

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 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.

Item 2: Opening Remarks / Review of Projects & Action List (0 minutes)

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 (5 minutes)

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

Item 4: COUNCIL VOTE - Approval Action Community Forum at ICANN78 - Fundamental Bylaws Amendments to Articles 18 and 19 of the ICANN Bylaws (10 minutes)

The Board is convening the Second IANA Naming Function Review ("IFR") to satisfy the requirement under Section 18.2(b) of the ICANN Bylaws that "Periodic IFRs after the first Periodic IFR shall be convened no less frequently than every five years, measured from the date the previous IFRT for a Periodic IFR was convened." The Board convened the first IFR on 16 September 2018.

The Board’s noted its resolution for the Approval of Amendments to IANA Naming Function Review Bylaws is “an essential step in furthering the implementation of the recommendations of the first IANA Naming Function Review (IFR) team, as Recommendation 3 of the IFR identified changes necessary to Article 18 of the ICANN Bylaws. As well as the additional proposed changes to Articles 18 and 19, which serve to: (1) addressing a 2019 request from the Registries Stakeholder Group on updating the geographic diversity selection requirements for future IFR teams; and (2) clarifying ambiguities on the IFR processes identified through the first running of an IFR after the IANA Stewardship Transition.” The Bylaws changes aim to clearly set out the expected process as designed during the IANA Stewardship Transition Process, and do not represent a change to any of these processes.

Here, the Council will vote on the fundamental Bylaws amendments.

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

4.2 – Council discussion

4.3 – Council Vote (voting threshold: simple majority)

Item 5: COUNCIL UPDATE - EPDP on Internationalized Domain Names Phase 1 Final Report (25 minutes)
On 20 May 2021, the GNSO Council approved the initiation request for the EPDP on Internationalized Domain Names (IDNs) and adopted its charter. The EPDP Team is expected to:

- Determine the approach for a consistent definition of all gTLDs; and
- Develop policy recommendations that will eventually allow for the introduction of variant gTLDs at the top level.

The EPDP Team’s charter includes 48 questions under seven broader topics, ranging from the “same entity” requirement at the top and second levels, to adjustments to ICANN policies and procedures as they relate to IDNs. The EPDP Team has been conducting its deliberations by building on the existing body of policy work, research, and analysis on the IDNs, specifically the Outputs produced by the GNSO New gTLD Subsequent Procedures PDP.

In November 2022, the GNSO Council approved the project change request from the EPDP Team. Within its Project Change Request, the EPDP Team noted it plans to complete its work in two phases; Phase 1 focuses on topics related to top-level IDN gTLD definition and variant management, and Phase 2 focuses on topics related to second level IDN variant management. The EPDP Team believes that this two-phased approach will help prioritize the current implementation planning for the PDP Outputs that are focused primarily on the top level.

On 24 April 2023, the EPDP Team published its Phase 1 Initial Report, which contains 68 recommendations for Public Comment. The Working Group reviewed the public comments, adjusted its report in light of the comments received, and the Final Report has received the full consensus of the Working Group.

Here, the Council will discuss these updates and determine if further outreach is needed for either of the items at this time.

Item 6: COUNCIL DISCUSSION - Updates on Status of Data Processing Agreement (DPA) negotiations and Registration Data Accuracy (20 minutes)

(i) DPA Negotiations

On 3 August 2023, the GNSO Council sent a letter to ICANN org and the chairs of the Registrar Stakeholder Group and Registries Stakeholder Group, notifying them of the Council’s decision to extend consideration of the Registration Data Accuracy Scoping Team recommendations until certain dependencies are met. The dependencies referenced include both (i) the outcome of the work by ICANN org on the scenario(s) in which the request and processing of registration data takes place and (ii) the finalization of the Data Processing Agreement (DPA).

ICANN org together with the chairs of the Registrar Stakeholder Group and Registries Stakeholder Group provided a response on 16 October 2023, notifying the Council that the “parties agreed that these agreements would take the form of a specification that may be added to the Registry Agreement (RA) and Registrar Accreditation Agreement (RAA), and as such we refer to them as the ‘Data Processing Specification’ or ‘DPS.’”

ICANN org noted that it has informed the Contracted Party House (CPH) Negotiating Team that its goal is to complete the negotiations, which include resolution of a few remaining items, by the end of the calendar year, with the eventual aim to have the DPS available for use by registrars and registries for the beginning of the Registration Data Policy implementation window.

(ii) Registration Data Accuracy

The Registration Data Accuracy (RDA) Scoping Team was initiated by the GNSO Council in July 2021 per the formation instructions. The Scoping Team was tasked with considering a number of accuracy-related factors such as the current enforcement, reporting, measurement, and overall effectiveness of accuracy-related efforts. These considerations are to help inform the team’s deliberations and development of recommendations to the GNSO Council on whether any changes are recommended to improve accuracy levels, and, if so, how and by whom these changes would need to be developed (for example, if changes to existing contractual requirements are recommended, a PDP or contractual negotiations may be necessary to effect a change).

The Scoping Team completed Assignment #1 (enforcement and reporting) and Assignment #2 (measurement of accuracy) and submitted its write up to the Council on 5 September 2022. In the write up, the group is suggesting moving forward with two proposals that would not require access to registration data, namely a registrar survey (recommendation #1) and a possible registrar audit (recommendation #2) that may help further inform the team’s work on assignment #3 (effectiveness) and #4 (impact & improvements), while it awaits the outcome of the outreach to the European Data Protection Board (EDPB) by ICANN org in relation to proposals that would require access to registration data (recommendation #3).

As has been communicated previously, Michael Palage has confirmed his resignation as Chair of this group to the Council. The Council will need to consider the proper timing for identifying a new Chair for this effort.

ICANN org provided a verbal update to the Council during the 20 April meeting. During its meeting on 20 June 2023, the Council voted to extend the deferral of the consideration of recommendations #1 and #2, pending resolution of recommendation #3 (pausing the work on proposals that require access to registration data until there is clarity from ICANN org on how it anticipates the requesting and processing of registration data to be undertaken in the context of measuring accuracy).

On 19 October 2023, ICANN org provided an update on Registration Data Accuracy efforts.

Here, the Council will discuss these updates and determine if further outreach is needed for either of the items at this time.
Item 7: COUNCIL DISCUSSION - ICANN Board Action on the Final Report of the Cross-Community Working Group on New gTLD Auction Proceeds (CCWG-AP) (20 minutes)

On 12 June 2022, the ICANN Board accepted all recommendations issued in the Final Report of the Cross-Community Working Group on New gTLD Auction Proceeds (CCWG-AP).

The CCWG-AP's Recommendation 7 states in relevant part “Existing ICANN accountability mechanisms such as IRP or other appeal mechanisms cannot be used to challenge a decision from the Independent Project Applications Evaluation Panel to approve or not approve an application. Applicants not selected should receive further details about where information can be found about the next round of applications as well as any educational materials that may be available to assist applicants. The CCWG recognizes that there will need to be an amendment to the Fundamental Bylaws to eliminate the opportunity to use the Request for Reconsideration and Independent Review Panel to challenge grant decisions.” The CCWG-AP also issued guidance to the Board that after reviewing how other entities dealt with appeals, that allowing appeals appeared to add too much complexity.

The Board's June 2022 decision reflected the Board's initial agreement with the CCWG-AP's conclusion that a Fundamental Bylaws change was necessary to implement Recommendation 7 and identified such a Bylaws change as a dependency on the launch of the ICANN Grant Program. Upon further consideration, the Board determined that the CCWG-AP’s recommendation to preserve the auction proceeds from being used to defend against usages of ICANN's accountability mechanisms for decisions on individual grant decisions can be implemented in alternative ways, including ways that do not require modification to ICANN's core Bylaws on accountability. As a result, the Board proposed updating its action on Recommendation 7 to reflect that ICANN org should implement this Recommendation 7 directly through the use of applicant terms and conditions rather than through a change to ICANN's Fundamental Bylaws.

During its meeting on 26 October 2023, the ICANN Board passed a resolution, revisiting its 12 June 2022 decision on Recommendation 7 of the Cross-Community Working Group on New gTLD Auction Proceeds (CCWG-AP) and issues the Revised Scorecard - CCWG on Auction Proceeds Final Report Recommendations – Board Action ("Revised Scorecard"), removing the requirement and dependency that a Fundamental Bylaws Amendment is required prior to the launch of the ICANN Grant Cycle, though the amendment would nevertheless be pursued.

Here, the Council will discuss the Board action and determine if further action is needed.

7.1 – Introduction of Topic (Greg DiBiase, GNSO Chair)
7.2 – Council discussion
7.3 - Next Steps

Item 8: COUNCIL DISCUSSION - Consider whether further work is needed after ICANN org outreach to European Network Information Security Agency (ENISA) (20 minutes)

During the Council’s extraordinary meeting on 5 June 2023, Thomas Rickert introduced an area for further Council discussion. Specifically, the European Union's Second Network and Information Systems Directive ("NIS2") entered into force on 16 January 2023. Article 28, subsection 3 provides, "Member States shall require TLD name registries and the entities providing domain name registration services, those are registrars, resellers and privacy and proxy services, to have policies and procedures, including verification procedures in place to ensure that the databases referred to in paragraph 1 include accurate and complete information. Member States shall require such policies and procedures to be publicly available." Additionally, the corresponding recital number 111, provides, in part, "Those policies and procedures should take into account to the extent possible the standards developed by the multi-stakeholder governance structures at the international level."

There was a suggestion by some Councilors to consider informal options of responding to the recital text to highlight the standards that are currently applicable. The Council formed a small team to further consider this effort; however, after hearing an update from ICANN org noting that ICANN org was already in the process of reaching out to the Network and Information Systems Cooperation Group Work Stream for art.28 NIS2, the Small Team agreed to await the draft from ICANN org instead of independently reaching out. The Small Team additionally noted that ICANN org was the appropriate entity to deliver this message, rather than the GNSO Council, but the Small Team requested ICANN org share the draft communication with the GNSO Council for an additional review prior to sending the communication. ICANN org shared its draft communication on 19 October 2023.

Here, the Council will discuss any further work is needed.

8.1 - Introduction of Topic (Nacho Amadoz, Council Vice Chair)
8.2 - Council Discussion
8.3 - Next Steps

Item 9: ANY OTHER BUSINESS (15 minutes)

9.1 SPS Planning
9.2 Confirmation of RDRS Chair
9.3 Update on Public Comment on Pilot Holistic Review - Terms of Reference

9.4 Update on GAC Communique (Susan Payne)

- Proposed GNSO Council Input on GAC Advice in the ICANN78 Communique: [https://docs.google.com/document/d/1xG5s4vKlOQyCIixpPEFWg0n7M11TuimT3pu5PBKlAA/edit?usp=sharing](https://docs.google.com/document/d/1xG5s4vKlOQyCIixpPEFWg0n7M11TuimT3pu5PBKlAA/edit?usp=sharing)
- Proposed GNSO Council Input on GAC issues of interest: [https://docs.google.com/document/d/1RFTHvbTCKnA8FCQ3mNWRTFX3HpXSW9S1zHLoXTcT_0/edit?usp=sharing](https://docs.google.com/document/d/1RFTHvbTCKnA8FCQ3mNWRTFX3HpXSW9S1zHLoXTcT_0/edit?usp=sharing)

Appendix 1: GNSO Council Voting Thresholds (ICANN Bylaws, Article 11, Section 11.3(i))

See [https://www.icann.org/resources/pages/governance/bylaws-en/#article11](https://www.icann.org/resources/pages/governance/bylaws-en/#article11).

Appendix 2: GNSO Council Absentee Voting Procedures (GNSO Operating Procedures, Section 4.4)


References for Coordinated Universal Time of 21:00 UTC

Local time between November and March in the NORTHERN hemisphere

See [https://www.timeanddate.com/time/change/](https://www.timeanddate.com/time/change/) for Dates for Daylight Saving Time and Clock Changes

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California, USA (PST) UTC-8  13:00
San José, Costa Rica (CST) UTC-6  15:00
New York/Washington DC, USA (EST) UTC-4  16:00
Buenos Aires, Argentina (ART) UTC-3  18:00
Kinshasa, Democratic Republic of Congo (WAT) UTC+1  22:00
Paris, France (CET) UTC+1  22:00
Moscow, Russia (MSK) UTC+3  00:00 (Friday)
Singapore (SGT) UTC+8  05:00 (Friday)
Melbourne, Australia (AEDT) UTC+11  08:00

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For other places see [http://www.timeanddate.com](http://www.timeanddate.com) and [https://tinyurl.com/4vs4b2mh](https://tinyurl.com/4vs4b2mh)