Final Proposed Agenda 26 June 2019

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/SIaGBg

This agenda was established according to the GNSO Operating Procedures v3.3, updated on 30 January 2018

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 held in Marrakech ICANN65: 13:00 - 15:00 local time

Coordinated Universal Time: 12:00 UTC: https://tinyurl.com/y5qgfetw

05:00 Los Angeles; 08:00 Washington; 13:00 London; 17:00 Islamabad; 21:00 Tokyo; 22:00 Melbourne

GNSO Council Meeting Remote Participation: https://community.icann.org/display/gnsocouncilmeetings/ICANN65+GNSO+Remote+Participation+Details+Open+and+Public+Meetings

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 (10 mins)

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 the 16th April 2019 were posted on the 4th May 2019

Minutes of the extraordinary GNSO Council meeting on the 28th May 2019 were posted on the 13th June 2019

Item 2: Opening Remarks / Review of Projects & Action List (15 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 (0 minutes)

- None

Item 4: COUNCIL DISCUSSION - Re-populating the Independent Review Process Implementation Oversight Team (IRP IOT) / GNSO Input to the Independent Review Process Standing Panel (15 minutes)

As part of the work from the CCWG-Accountability Work Stream 1 (WS1), the Independent Review Process Implementation Oversight Team (IRP IOT) was created in 2016. The IRP IOT has the critical role of implementing revised IRP provisions. The Council understands that attendance and attention to this important community activity has been less than ideal. As a result, the Council believes that repopulating the GNSO membership for the IRP IOT is critically important, especially in relation to the request for input on seating the Standing Panel.

In relation to the seating of the Standing Panel, ICANN org published a Call to Action, stating that "The IRP is an accountability mechanism provided by the ICANN Bylaws that allows for third-party review of actions (or inactions) by the ICANN Board or staff that are allegedly in violation of the Bylaws or Articles of Incorporation. The IRP was updated through the work of the Cross Community Working Group on Enhancing ICANN Accountability, to make the IRP more transparent, efficient, and accessible, and designed to produce consistent and coherent results that will serve as a guide for future actions. One feature of the updated IRP is the establishment of a standing panel from which panelists shall be selected to preside over each IRP dispute as initiated." At this stage, ICANN org is seeking to consult with the SOs and ACs to establish the process by which members are selected to serve on the standing panel to hear IRPs.

The Call to Action included a series of questions to help resolve pending issues. Additional questions can also be found on the Wiki. However, there was concern within the ICANN community that the Call to Action was not widely seen, as it was an alternative form of soliciting public input (e.g., the expectation is generally public comment).

Here, the Council will emphasize the need to repopulate the membership of the IRP IOT and determine the best path forward for providing feedback in seating the IRP Standing Panel.

4.1 – Update (Council leadership)

4.2 – Council discussion

4.3 – Next steps

Item 5: COUNCIL DISCUSSION – IGO-INGO Access to Curative Rights Protection Mechanisms Next Steps (15 minutes)

On 9 July 2018, the PDP WG submitted its Final Report to the GNSO Council for its consideration, which contains five consensus recommendations, along with three Working Group member minority statements, documenting their disagreement either with one or more of the final recommendations or other parts of the Final Report.

On its 19 July Council meeting, the Council resolved to accept the Final Report from the IGO-INGO Access to Curative Rights Mechanisms PDP Working Group, where it noted that it would consider the topic of curative rights protections for IGOs in the broader context of the appropriate overall scope of protection for all IGO identifiers.

On 9 October 2018, the Council held a question and answer webinar to review the recommendations and to ask itself a series of questions, 1) Does the Council believe that the PDP has addressed the issues that it was chartered to address (i.e. What questions/topics was the Working Group chartered to consider, did it consider those charter topics/questions, and did it do so in a legitimate way)?; 2) Has the PDP followed due process?; and 3) Did the PDP Working Group address GAC advice on the topic?

A motion to consider the Final Report was originally submitted on the 24 October 2018 Council meeting agenda but was withdrawn due to concerns around both the process followed by the PDP, as well as the substance of the PDP WG's recommendations. Council leadership and staff developed a summary document (Summary Paper and Slide Deck) that lists issues raised by Councilors, options available, and potential considerations. During the November meeting, the Council considered a set of available options and briefly discussed possible next steps.

On 20 December 2018, Council leadership circulated a proposal for next steps. Council leadership has since sent a reply to the GAC, in response to a letter received during ICANN63. On the 24 January 2018 Council meeting, the Council discussed the proposal prepared by Council leadership. On 14 February 2019, the Council further discussed next steps and agreed to consult with the Governmental Advisory Committee, both before and at ICANN64. The GNSO Council and GAC had productive discussions, where the Council discussed procedural options that it is considering. The GAC's Kobe Communique noted the GAC's "fruitful exchanges with the GNSO Council regarding the possibility of restarting the PDP on curative protections, under conditions amenable to all interested parties, including IGOs and interested GAC members, with a view to achieving mutually acceptable results [with] a timeline with a targeted date associated with such a course of action." Based on the Council discussions and consultation with the GAC, the Council believes that it has thoroughly considered the available options. On 18 April 2019, the Council resolved to approve recommendations 1-4 and refer recommendation 5 to be considered by the RPMs PDP as part of its Phase 2 work.

As part of its Consent Agenda, on 16 May 2019, the Council confirmed the transmission of the Recommendations Report to the ICANN Board. On 23 May, the GAC sent a letter to the GNSO Council, noting that approving recommendations 1-4 and referring recommendation 5 to the RPMs PDP is contrary to longstanding GAC Advice. The GAC therefore hopes the Council can confirm its willingness to participate in a Board facilitated discussion and requests response by 31 May 2019. In a meeting between the leadership of the GNSO and GAC, the prospect of a facilitated dialogue was discussed. Subsequently, the GAC and the GNSO exchanged further l correspondence regarding the GNSO Council's willingness to engage in a facilitated dialogue.

Here, the Council will consider the latest letters from the GAC to the GNSO, to the ICANN Board and discussions at ICANN65, and consider the best path forward.

5.1 – Introduction of topic (Council leadership)

5.2 – Council discussion

5.3 – Next steps

Item 6: COUNCIL DISCUSSION – Next Steps For Internationalized Domain Names (15 minutes)

On 14 March 2019, the Board resolved to approve the Recommendations for Managing IDN Variant TLDs, developed by ICANN org. In doing so, the Board requested that "the ccNSO and GNSO take into account the Variant TLD Recommendations while developing their respective policies to define and manage the IDN variant TLDs for the current TLDs as well as for future TLD applications." On 9 April 2019, the GNSO Council received a letter from ICANN org, noting their willingness to provide any support as needed for this effort.

The ICANN Board was scheduled to consider and vote to approve the IDN Guidelines 4.0 during its 3 May 2019 meeting. The GNSO Council, in light of the Board's resolution on IDN variants as well as the intended action on the IDN Guidelines 4.0, determined that additional time was needed to consider the policy implications under its remit. Accordingly, the Council sent a letter to the ICANN Board, asking that their consideration of the IDN Guidelines 4.0 be deferred. That request to defer was granted by the ICANN Board. On 4 June 2019, the ICANN Board sent a letter to the GNSO Council requesting "the GNSO Council to share its plan on how it intends to move forward with IDN Implementation Guidelines at its earliest convenience, ideally before ICANN66 meeting in Montreal, Canada."

The GNSO Council is in the process of studying the full extent of impacts from the Variant TLD Recommendations and the IDN Guidelines 4.0, and the proper mechanism to resolve any policy implications.

Here, the GNSO Council, after having benefited from conversations with other impacted parties (e.g., ccNSO, ICANN org, ICANN Board), will discuss possible next steps.

6.1 – Introduction of topic (Council leadership)

6.2 – Council discussion

6.3 – Next steps

Item 7: COUNCIL DISCUSSION - Board Consultation on the Expedited PDP on the Temporary Specification Phase 1 - Next Steps (15 minutes)

On 15 May, the ICANN Board informed the GNSO Council of the Board's action in relation to the GNSO's Expedited Policy Development Process on the Temporary Specification for gTLD Registration Data policy recommendations. The Board did not adopt two of the recommendations in full, where the Board has identified that portions of those recommendations are not in the best interests of the ICANN Community or ICANN and is initiating the consultation process between the Board and the GNSO Council. This concerns recommendation #1, purpose 2 and recommendation #12, deletion of data in the Organization field. As required under the ICANN Bylaws at Annex A-1,Section 6.b, a Board Statement is attached as Annex A to the letter, articulating the reasons for the Board's determination on these two items. As per the Bylaw requirements (Annex A-1, Section 6.c), "the Council shall review the Board Statement for discussion with the Board as soon as feasible after the Council's receipt of the Board Statement." During the Council's Extraordinary Meeting on 28 May 2018, it reviewed the Board Statement and conducted a lengthy discussion on the best path forward.

On 30 May 2019, Keith Drazek, the GNSO Chair provided an update to the EPDP Team on the expected next steps in relation to Board action on Phase 1 recommendations and requested that the EPDP Team provide input to identify any questions, comments or concerns in relation to ICANN Board's action on the EPDP Phase 1 Recommendations. Subsequently, on 9 June 2019, Janis Karklins, Chair of the EPDP, informed the GNSO Chair of the following preliminary input noting that there was not sufficient time to formalize and agree on an EPDP Team response:

"• In relation to purpose 2, there is general understanding for why the Board decided to not adopt this purpose and the EPDP Team confirms that it considers it firmly within its scope for phase 2 to further review this purpose in the context of the System for Standardized Access / Disclosure (SSAD);

- For recommendation #12, some additional context has been provided that may help explain the thinking behind the EPDP Team's original recommendation. However, there is no agreement at this stage on whether or not the Board's non-adoption should be supported."

Here, the Council will continue to consider the next steps, especially in light of conversations held at ICANN65.

See also Annex A-1, Section 6. Board Approval Process below for further details.

*Section 6. **Board Approval Processes***

The Board will meet to discuss the EPDP recommendation(s) as soon as feasible, but preferably not later than the second meeting after receipt of the Recommendations Report from the Staff Manager. Board deliberation on the EPDP Recommendations contained within the Recommendations Report shall proceed as follows:

- *Any EPDP Recommendations approved by a GNSO Supermajority Vote shall be adopted by the Board unless, by a vote of more than two-thirds (2/3) of the Board, the Board determines that such policy is not in the best interests of the ICANN community or ICANN. If the GNSO Council recommendation was approved by less than a GNSO Supermajority Vote, a majority vote of the Board will be sufficient to determine that such policy is not in the best interests of the ICANN community or ICANN.*

- In the event that the Board determines, in accordance with paragraph a above, that the proposed EPDP Recommendations are not in the best interests of the ICANN community or ICANN (the Corporation), the Board shall (i) articulate the reasons for its determination in a report to the Council (the "Board Statement"); and (ii) submit the Board Statement to the Council.

- The Council shall review the Board Statement for discussion with the Board as soon as feasible after the Council's receipt of the Board Statement. The Board shall determine the method (e.g., by teleconference, email, or otherwise) by which the Council and Board will discuss the Board Statement.

At the conclusion of the Council and Board discussions, the Council shall meet to affirm or modify its recommendation, and communicate that conclusion (the "Supplemental Recommendation") to the Board, including an explanation for the then-current recommendation. In the event that the Council is able to reach a GNSO Supermajority Vote on the Supplemental Recommendation, the Board shall adopt the recommendation unless more than two-thirds (2/3) of the Board determines that such guidance is not in the interests of the ICANN community or ICANN. For any Supplemental Recommendation approved by less than a GNSO Supermajority Vote, a majority vote of the Board shall be sufficient to determine that the guidance in the Supplemental Recommendation is not in the best interest of the ICANN community or ICANN.

7.1 – Introduction of topic (Council leadership)

7.2 – Council discussion

7.3 – Next steps

Item 8: COUNCIL DISCUSSION – Consideration of Updates From PDPs and Determination if Follow-Up or Council Action is Needed (10 minutes)

On a 17 June 2019 webinar, in advance of ICANN65, the leadership teams of the various GNSO PDPs currently operating will have provided an update to the GNSO Council on current status, timeline, current issues, and potential ways in which the GNSO Council may be able to provide assistance. The GNSO Council, after having received this update, will consider if any of the PDPs currently under its management may benefit from additional analysis /consideration and/or Council action.

Here, the Council will discuss whether any additional steps are needed as it relates to its management of the GNSO PDPs.

8.1 – Introduction of topic (Council leadership)

8.2 – Council discussion

8.3 – Next steps

Item 9: COUNCIL DISCUSSION – Consideration of Competition, Consumer Trust & Consumer Choice Review Team (CCT-RT) Recommendations Passed to the GNSO (10 minutes)

As was required under ICANN's Affirmation of Commitments, the community-led Competition, Consumer Trust and Consumer Choice Review Team (CCT-RT) was established on 23 December 2015. The CCT-RT completed its work and delivered its Final Report to the ICANN Board on 8 September 2018.

On 1 March 2019, the ICANN Board resolved to take action on the 35 recommendations as specified in the scorecard titled Final CCT Recommendations: Board Action (1 March 2019), which fell in three categories: Accepting recommendations, subject to costing and implementation considerations; Placing recommendations (in whole or in part) in "Pending" status, directing ICANN org to perform specific actions to enable the Board to take further actions; Passing recommendations (in whole or in part) to community groups the CCT-RT identified for their consideration

On 10 June 2019, the GNSO Council received a communication informing them of the CCT-RT recommendations passed to it, along with an offer to provide additional information or context. The email highlighted the following text: "in passing these recommendations through, the Board is neither accepting, nor rejecting the recommendations. […] Passing recommendations through to community groups is not a directive that the groups identified should formally address any of the issues within those recommendations. It is within the purview of each group to identify whether work will be taken on and the topics that the group will address".

Here, the Council will discuss possible next steps to take in regards to the CCT-RT recommendations passed through to the GNSO.

9.1 – Introduction of topic (Council leadership)

9.2 – Council discussion

9.3 – Next steps

Item 10: COUNCIL UPDATE – Progress Made For the Implementation of PDP 3.0 (10 minutes)

The GNSO Council identified a number of challenges as well as possible improvements related to the Policy Development Process (PDP), as a result of a number of discussions throughout 2018. These efforts started in the form of a staff discussion paper, shared on 10 January 2018 and discussed at the GNSO Council's 2018 Strategic Planning Session.

In order to engage the broader GNSO community in this discussion, the GNSO Council organized a collaborative session involving the members of the current PDP Leadership Teams as well as the broader community to summarize key points from the Strategic Planning Session, elaborate on the challenges that PDPs presently face and identified, and begin to brainstorm possible solutions.

On 11 May 2018, an updated paper was prepared, taking into account feedback received. The GNSO Council solicited additional feedback from the GNSO Stakeholder Groups and Constituencies, summarizing input received. An updated report was prepared as well as an Implementation Plan. On 24 October 2018, the Council resolved to adopt the Final Report and begin implementation, as well as report on progress no less than on a quarterly basis.

At the 2019 GNSO Council Strategic Planning Session, the Council discussed early drafts for select implementation areas, ultimately agreeing that a small team of Councilors be convened to support implementation efforts. That small team of Councilors first convened at ICANN64 in Kobe, Japan and has since been meeting on a bi-weekly basis.

Here, the Council will receive an update on the implementation efforts from the PDP 3.0 small team of Councilors.

10.1 – Introduction of topic (Rafik Dammak, lead for PDP 3.0 small team)

10.2 – Council discussion

10.3 – Next steps

Item 11: ANY OTHER BUSINESS (5 minutes)

11.1 - Open microphone

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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.

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

See https://gnso.icann.org/sites/default/files/file/field-file-attach/op-procedures-30jan18-en.pdf

References for Coordinated Universal Time of 12:00 UTC

Local time between March and October Summer in the NORTHERN hemisphere

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California, USA (PDT) UTC-7 05:00

San José, Costa Rica (CST) UTC-6 06:00

New York/Washington DC, USA (EDT) UTC-4 08:00

Buenos Aires, Argentina (ART) UTC-3 09:00

Rio de Janeiro, Brazil (BRT) UTC-3 09:00

London, United Kingdom (GMT) UTC+1 13:00

Kinshasa, Democratic Republic of Congo (WAT) UTC+1 13:00

Paris, France (CET) UTC+2 14:00

Moscow, Russia (MSK) UTC +3 15:00

Islamabad, Pakistan (PKT) UTC+5 17:00

Singapore (SGT) UTC+8 20:00

Tokyo, Japan (JST) UTC+9 21:00

Melbourne, Australia (AEDT) UTC+11 22:00

DST starts/ends on Sunday 27 of October 2019, 2:00 or 3:00 local time (with exceptions) for EU countries and on Sunday 03 of November 2019 for the US.

For other places see http://www.timeanddate.com and https://tinyurl.com/y5qgfetw