

11 March 2020

RE: Potential Impasse Concerning Implementation of EPDP Phase 1 – Recommendation 7

Mr. Keith Drazek
Chair, GNSO Council

Dear Keith,

As you know, in accordance with the GNSO Operating Procedures and Consensus Policy Implementation Framework, the ICANN organization is currently working with a volunteer implementation review team (IRT) to craft policy language based on the recommendations of the Temporary Specification for gTLD Registration Data Expedited Policy Development Process Team (EPDP Phase 1 recommendations). The next milestone in this work will be publication of the draft Registration Data Policy, and a proposed implementation schedule for public comment. As you may have seen, ICANN org shared a [letter](#) earlier this year in response to GAC advice concerning work in progress and completed.

The Board recognizes that activities around registration data impact many stakeholders in the community. The Board is supportive of the continued work in the community including implementation of the Phase 1 policy recommendations, and notes the Council's [response](#) to the org's [communication](#) on implementation of Recommendation 28.

Following the discussions between us during the recent stakeholder meetings in Los Angeles, this letter is to address what appears to be reaching an impasse in regard to completing the implementation of the Phase 1 recommendations. The Board understands there are diverging views among some IRT members about how to implement EPDP Phase 1 Recommendation 7, which specifies the data elements that the registrar must transfer to the registry operator, and which states:

The EPDP Team recommends that the specifically-identified data elements under “[t]ransmission of registration data from Registrar to Registry”, as illustrated in the aggregate data elements workbooks, must be transferred from registrar to registry provided an appropriate legal basis exists and data processing agreement is in place.

The recommendation goes on to include a table of data elements and a reference to an illustrative data elements matrix.

The Board would like to reinforce the decision it took in adopting the EPDP Phase 1 recommendations and encourage the GNSO to take active steps toward preventing an impasse.

Board Consideration of Recommendation 7

As you may recall, at its 15 May 2019 meeting, the Board [adopted](#) the GNSO Council Policy Recommendations for a new Consensus Policy on gTLD Registration Data as set forth in section 5 of the [Final Report](#) in accordance with a scorecard titled "[Scorecard: EPDP Phase 1 Recommendations](#)."

In considering Recommendation 7, the Board noted that the Thick WHOIS Transition Policy for .COM, .NET, and .JOBS requires transfer of registrant contact information from registrars to registry operators. The Board went on to note the recommended requirement that data elements collected and generated by the registrars "must be transferred from registrar to registry provided an appropriate legal basis exists and a data processing agreement is in place[.]" and that transfer is optional for registrant contact information. The Board concluded that, "[t]he intended impact of this Recommendation on the Thick WHOIS Policy was not clearly identified in the Final Report."

In the scorecard, the Board found that the purposes for registration data processing, contained in the Final Report (Recommendation 1), provided the legal basis for processing the aggregate minimum data set under Recommendation 7. The Board also requested that the EPDP Phase 2 Team consider whether the suggested corrections to Recommendation 7, contained in the Registry Stakeholder Group's (RySG's) comments on the Final Report, and the accompanying chart in Appendix G more accurately reflected the Phase 1 consensus and should be adopted. In these comments, the RySG recommended a clarification that the registrant data fields that are required to be collected by the registrar are "REQUIRED to be transferred from Registrar to Registry IF Registry terms/conditions/policies require this data element." While the RySG statement is not the basis for implementation of policy, we do not believe it is inconsistent with the current implementation of Recommendation 7, as registry policies include the Thick WHOIS Policy which requires transfer of these data fields.

Finally, the Board confirmed its understanding that the EPDP Final Report did not repeal or overturn existing consensus policy including, in this case, the Thick WHOIS Transition Policy. Consistent with Recommendation 27, the Board directed ICANN org to work with the IRT to examine and transparently report on the extent to which the EPDP Phase 1 recommendations required modification of existing consensus policies, and called upon the GNSO Council to promptly initiate a policy development process to review and recommend any required changes to consensus policies. The resolution is clear that the Board approved the EPDP Phase 1 recommendations on the basis that the Thick WHOIS Transition Policy is unchanged by these recommendations. Until repealed or overturned by a GNSO policy development process, the Thick WHOIS Transition Policy is still in place and remains binding on contracted parties.

Policy Implementation Steps

With regard to the implementation work in progress for the EPDP Phase 1 recommendations, the Board understands that ICANN org has drafted the Registration Data Policy language based on the direction provided by the Board when it took action on the policy recommendations -- that is, "the Board confirms its understanding that the EPDP Final Report does not repeal or overturn existing consensus policy including, in this case, the Thick WHOIS Policy."

The EPDP Phase 1 Final Report did not specify if Recommendation 7 was intended to modify the Thick WHOIS Policy and, if so, how. This is in contrast with EPDP Phase 1 policy recommendations such as Recommendation 23 which include specific changes to the Uniform Domain Name Dispute Resolution Policy. The Thick WHOIS Transition Policy was, however, included in a list of policies to be considered during the implementation of the EPDP Phase 1 recommendations, per Recommendation 27.

ICANN org shared a work plan for Recommendation 27 with the GNSO Council and the IRT in August 2019, and undertook to review the consensus policies currently in effect to identify those impacted by the EPDP Phase 1 recommendations. The [wave 1 Recommendation 27 report](#) describing the impacted areas identified was reviewed with the IRT and shared with the GNSO Council on 19 February 2020. The GNSO Council is expected to review and determine next steps for those policies with identified impact, which include the Thick WHOIS Transition Policy as well as the Registry Registration Data Directory Services Consistent Labeling & Display Policy, which derived from the same policy development process.

Recalling that the Board's action in May 2019 to adopt the EPDP Phase 1 recommendations called upon the GNSO Council to promptly initiate a policy development process to review and recommend any required changes to consensus policies, the Board again encourages the GNSO Council to consider the EPDP Phase 1 recommendations' impact to the Thick WHOIS Transition Policy and whether any changes are required pursuant to EPDP Phase 1 Recommendation 27, using its existing procedures. Unless and until the Thick WHOIS Transition Policy is changed through a policy development process, gTLD registries are obligated to require registrars to transfer all "required" fields to them, and registrars are obligated to do so.

Considerations for Future Policy Development Processes

Given the uncertainty characterizing the implementation discussions on Recommendation 7, I would underscore that the Board supports continued dialogue on a mechanism to transparently identify any impacts of proposed new policies on existing policies as part of the GNSO Council or Board consideration of new recommendations going forward.

Absent a clear statement in new consensus policy recommendations that the new policy is intended to supercede (in whole or part) requirements in existing consensus policies, the Board's position is that existing policy requirements will continue to stand. If a policy recommendation is unclear as to its intended impact on an existing ICANN consensus policy, this may be a basis to conclude that its adoption would not be in the best interests of the ICANN community or ICANN org, pursuant to Annex A, Section 9, of the ICANN Bylaws. In such case, the Bylaws provide for Council and Board discussions and potential Supplemental Recommendations from the Council.

The Board is hopeful that these considerations are useful, and looks forward to continued engagement in this area.

Sincerely,



Maarten Botterman
Chair, ICANN Board of Directors