

Draft motion – Confirmation that modification to procedure that implements the Whois conflicts with privacy law policy recommendation is consistent with the intent of the policy recommendation

Whereas,

In November 2005, the Generic Names Supporting Organization (GNSO) concluded a policy development process (PDP) on Whois conflicts with privacy law, which recommended the creation of a procedure to address conflicts between a contracted party's Whois obligations and local/national privacy laws or regulations.

The ICANN Board of Directors adopted the recommendations in May 2006 and the final procedure was made effective in January 2008.

As noted in the GNSO Operating Procedures, “Periodic assessment of PDP recommendations and policies is an important tool to guard against unexpected results or inefficient processes arising from GNSO policies”. As called for in Step 6 of the [ICANN Procedure For Handling WHOIS Conflicts with Privacy Law](#), ICANN launched a review of the procedure in May 2014. Following a Call for Volunteers addressed to all interested parties, an Implementation Advisory Group (IAG) was formed to review the implementation of the policy recommendations and began its work in January 2015. The IAG devoted most of its time discussing whether additional triggers to invoke the procedure should be incorporated and if so how to ensure that they remain consistent with the existing policy.

On 26 May 2016, the IAG submitted its final report and recommendation to the GNSO Council.

The IAG recommends a modification to the existing Whois Conflicts Procedure. The modification would allow a party to trigger the procedure by obtaining a written statement from the government agency charged with enforcing its data privacy laws indicating that a particular Whois obligation conflicts with national law and then submitting that statement to ICANN.

Resolved,

The GNSO Council has reviewed the IAG Final Report (<http://gns0.icann.org/en/drafts/iag-review-whois-conflicts-procedure-23may16-en.pdf>) and concludes that the proposed modification to the procedure conforms to the intent of the original policy recommendations and as such the GNSO Council confirms its non-objection to the modification being implemented by GDD Staff as outlined in Appendix I (<http://gns0.icann.org/en/drafts/iag-review-whois-conflicts-procedure-appendix-1-23may16-en.pdf>) as soon as practically feasible.

The GNSO Council recommends that as soon as the modification has been implemented all affected parties are informed accordingly.

Furthermore, the GNSO Council requests that ICANN staff monitor the implementation of the modified procedure to determine whether the modification addresses the issues identified by the IAG Final Report and report back accordingly.

The GNSO Council thanks the IAG for its work and takes note of the minority views included in the Final Report. The GNSO Council requests that these are shared with the Next-Generation Registration Directory Services PDP Working Group as the broader WHOIS issues raised in these views are expected to be dealt with in that PDP.