

11 February 2021

Maarten Botterman
Chair, ICANN Board of Directors

RE: GNSO Council Clarification on Supplemental Recommendation on EPDP Phase 1, Recommendation 12

Dear Maarten:

Thank you for your [recent letter](#) of 11 December 2020 providing clarification on the Board's specific concern regarding the GNSO Supplemental Recommendation on the Expedited Policy Development Process on the Temporary Specification for gTLD Registration Data (EPDP) Phase 1, Recommendation 12, concerning the organization field.

The original [EPDP Phase 1 Recommendation 12](#) provided, in part, that: "The Organization field will be published if that publication is acknowledged or confirmed by the registrant via a process that can be determined by each registrar. If the registered name holder does not confirm the publication, the Organization field can be redacted or the field contents deleted at the option of the registrar."

In effect, this recommendation (to initially redact or delete the Organization field) is intended to fulfill the "privacy by design" mandate in GDPR and other data protection regulations.

As noted in your recent letter, the ICANN Board, when considering the EPDP Phase 1 recommendations, expressed concern that deletion of the contents in the organization field might result in the loss of identifying information about the registrant and might not be consistent with ICANN's mission or in the global public interest.

A 14 October 2019 [letter](#) from the Board to the Council noted that, "including additional implementation guidance similar to that which the administrative field was treated in a supplemental recommendation might be a path forward to essentially reaffirm the recommendation," and that, "we believe that the risks to deleting such data with no other safeguards in place outweigh the proffered benefits."

In response, on 19 December 2019 the GNSO Council [adopted](#) a Supplemental Recommendation, amending the text of Recommendation 12 to state that, "prior to eliminating Organization Contact fields, all Registrars MUST ensure that each registration contains Registered Name Holder contact information."

In discussing the GNSO Council's Supplemental Recommendation during the [ICANN69 Joint Session between the ICANN Board and the GNSO Council](#), the Board provided an example that

demonstrated its concern with the Supplemental Recommendation language as written, i.e., “a situation where for some reason, the registrant is listed as domain administrator and the organization is listed as ICANN, but you can't confirm the organization. So that field drops away and the registrar has the ability to actually delete that information entirely.”

The Board went on to note in its [recent letter](#): “in a case like the below, deletion of the organization field data would result in the loss of such identifying information:

Domain name: icann.org
Registrant: Domain Administrator
Organization: ICANN”

Based on the above use case, the Board posed the following question: “Even if you can contact the domain administrator, how do you avoid a situation where essentially the registration has been transferred or on paper it looks like it's been transferred from ICANN, the organization, to an individual?”

The Council further notes the Board’s question regarding the deletion of registrant data; specifically, the Board noted its concern, “is not that the data be retained as part of the registrar’s registration data records, but that it is being retained *someplace*, as a safeguard in the event of disputes or other issues, rather than deleted.” [Emphasis added.]

The apparent underlying concern is that deleting the organization field might, in effect or apparently, transfer the domain away from an organization to a contact in that organization. This is not the case. The data published in Whois or RDAP is not the only data stored, nor is it the data on which the registrar primarily relies to maintain contact with the registrant. In practice, the organization field is implemented in non-standard, various ways by registrars and the actual registrant of record is retained in other, standard ways. Therefore, registrars would not treat this scenario as a transfer from the organization.

Put another way, the scenario raised by the Board letter assumes that Registrars always treat the Registrant Organization field as having priority over the Registrant Name field. There is no such convention in the industry. For those Registrars that do prioritize the Organization field, they must also collect and retain Registrant data that is distinct from (and generally more comprehensive than) the data in WHOIS/RDS. This includes customer/shopper data, additional contacts, and account/ billing data. Removing contents of the Organization field in RDS should not impede a Registrar’s ability to contact a customer or verify their identity.

Additionally, when the Council confirmed that, "all Registrars MUST ensure that each registration contains Registered Name Holder contact information," this meant that the information accompanying the registration allows for contacting the registrant. The example provided by the ICANN Board is not considered contact information, but instead general terminology; as such, the Registrar would not be considered in compliance with this supplemental recommendation unless there is other information present that would allow for

contacting the Registered Name Holder (especially in the rare instance of a registrar failure and transition of registrations from a de-accredited, losing Registrar to a gaining Registrar).

With that in mind, the Council, after consultation with the Registrar Stakeholder Group, confirms that registrars collect and retain registrant data both pursuant to ICANN contractual requirements and according to their own individual business needs and legal obligations. In practice, this means that registrars retain their customers' data within their own customer database(s) outside of the Whois system, and, accordingly, registrars will maintain the ability to contact their customers and verify domain ownership in the event of disputes or other issues, even after the implementation of Supplemental Recommendation 12.

We trust this addresses the Board's concern.

Sincerely,

Philippe Fouquart
Chair, GNSO Council