

XX May 2020

RE: Next Steps on EPDP Phase 1 Recommendation 7 Implementation and Thick WHOIS Transition Policy

Mr. Maarten Botterman
Chair, ICANN Board

Dear Maarten,

Thank you for your [letter](#) of 11 March 2020 flagging a potential impasse within the EPDP Phase 1 Implementation Review Team (IRT). In response, the Council would like to share its views concerning the EPDP Phase 1 recommendations and the respective roles and responsibilities of the IRT and the GNSO Council regarding the resolution of any conflicts that may exist between the EPDP Phase 1 recommendations and pre-existing Consensus Policies.

Regarding the Impact of EPDP Phase 1 Recommendations on Existing Policies:

The GNSO Council agrees with the ICANN Board's understanding "that the EPDP Final Report did not repeal or overturn existing consensus policy including, in this case, the Thick WHOIS Transition Policy."

We also agree that it is the role of the GNSO Council to initiate an appropriate policy development process to review and recommend any required changes to impacted Consensus Policies. As noted in your letter, on 19 February 2020, the GNSO Council received the EPDP Phase 1 Recommendation 27 "Wave One" report from ICANN Org, which identified several inconsistencies and incompatibilities between the EPDP Phase 1 recommendations and existing ICANN Consensus Policies, including some inconsistencies between Recommendation 7 and the pre-GDPR Thick WHOIS Transition Policy. The report notes that EPDP Phase 1 Recommendation 27 anticipated that established policies and procedures, including established Consensus Policies, would need to be updated "to ensure consistency with" the EPDP Phase 1 recommendations.

Since receiving the Wave One report, the GNSO Council has conducted a review of all GNSO work, ongoing and future, to plan and prioritize next steps, including addressing those inconsistencies and/or conflicts highlighted in the Wave One report. The GNSO Council will further discuss this important topic at our next monthly meetings on 21 May 2020 and 24 June 2020.

Regarding the Implementation of Recommendation 7:

As stated previously, the GNSO Council acknowledges and agrees with the Board's understanding that the recommendations contained in the EPDP Final Report do not overturn the Thick WHOIS Transition Policy. With this shared understanding in mind, however, the Council would like to take this opportunity to remind the Board and the broader ICANN community of the responsibility that ICANN Org, via the Implementation Review Team (IRT), has in implementing GNSO policy recommendations that are developed through the bottom-up, multi-stakeholder policy development process and adopted by the ICANN Board.

EPDP Phase 1 Recommendation 7 makes the transfer of certain registrant contact information from the registrar to registry optional. In your letter, you note that the Board recognized this fact when it approved Recommendation 7.

The GNSO Council recognizes that “optional” does not mean the same thing as “may never be required”. Moreover, the GNSO Council also recognizes that Recommendation 7 allows for the transfer of data elements from registrar to registry where there is a legal basis, such as Thick WHOIS requirements in a Registry-Registrar Agreement. Therefore, it is possible to implement Recommendation 7 and apply Thick WHOIS Transition policy. This fact is illustrated by Recommendation 5 and Recommendation 7’s acknowledgment that data elements identified by a Registry Operator in its registration policy may be transferred. Support also can be found in the Registry Stakeholder Group’s (RySG) comments, which 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.”

In summary, the ICANN Board also provided clear guidance to ICANN Org and the IRT on how to address potential conflict between Recommendation 7 and the Thick WHOIS Transition Policy in a manner that is consistent with the bottom-up, multi-stakeholder policy development process at the core of ICANN’s mission: “Consistent with Recommendation 27, the Board directed ICANN Org to work with the IRT to examine and report on the extent to which these [the EPDP Phase 1] recommendations require 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 role of ICANN Org and the IRT is to implement the Phase 1 recommendations as they were developed by the community via the bottom-up, multi-stakeholder process, and approved by the ICANN Board and then report any conflicts that may require modifications to existing Consensus Policies to the GNSO Council. The Council considers that ICANN Org’s provision of the Wave One report sufficiently fulfills that reporting responsibility.

Likewise, the Council firmly believes that the ICANN Board’s direction does not give ICANN Org or the IRT the latitude to revise or disregard policy recommendations or Consensus Policies that were developed through the bottom-up, multi-stakeholder policy development process and then approved by the Council.

We look forward to continued engagement with the ICANN Board, the IRT and the broader community as this important community work is chartered and executed.

Sincerely,

Keith Drazek, GNSO Chair

Rafik Dammak, NCPH Vice Chair

Pam Little, CPH Vice Chair