

Summary of WHOIS Conflicts Procedure IAG Small Team Proposal

Relevant History

During its meeting on 22 February 2019, the GNSO Council adopted the Charter for the ICANN Procedure For Handling WHOIS Conflicts with Privacy Law Implementation Advisory Group (WHOIS Conflicts Procedure IAG). The procedure is for use by ICANN staff. While it includes possible actions for the affected gTLD registry/registrar, this procedure does not impose any new obligations on registries/registrars or third parties. It aims to inform registries/registrars and other parties of the steps that will be taken when a possible conflict between other legal obligations and the ICANN contractual requirements regarding WHOIS is reported to ICANN. Shortly after the Council's adoption of the Charter, the GNSO Council discussed the upcoming work of the EPDP on the Temporary Specification for gTLD Registration Data and noted that the EPDP Team's work may impact the IAG's work. As the EPDP Team was tasked to "determine if the Temporary Specification for gTLD Registration Data should become an ICANN Consensus Policy, as is or with modifications, while complying with the GDPR and other relevant privacy and data protection law", the Council instructed support staff to refrain from circulating the call for volunteers until the EPDP Team completed its work. The EPDP Phase 1 Team submitted its Final Report to the GNSO Council for its consideration on 20 February 2019. The EPDP Phase 2 Team submitted its Final Report to the GNSO Council for its consideration on 31 July 2020.

During its extraordinary meeting on 23 July 2020, the GNSO Council agreed to send out a call for volunteers for a small group of GNSO Councilors, who were tasked with reviewing the Charter and providing the Council with a recommendation for next steps.

Small Team Proposal

The Small Team on WHOIS Conflicts Procedure IAG met on 26 August 2020 and discussed a proposal for next steps. The team deliberated on a range of possible options and concluded a combination of options as follows:

The Small Team proposes first requesting ICANN org, in consultation with contracted parties, to come forward with a proposal based on past experience with both the WHOIS Conflicts Procedure and the registrar data retention waiver process. In formulating a proposal, the Small Group recommends that ICANN org consider changes to data protection law that may have affected the previous implementation of this Procedure in light of the contractual requirements, e.g., GDPR. For example, should the identification of a new trigger to activate the procedure be considered given potential financial penalties under GDPR?

Following receipt of the proposal from ICANN org, the Council will consider the proposal and assess next steps, including seeking input from the community, if appropriate given the substance of the proposal. If the proposal is not deemed appropriate, the Small Team recommends a small group of Council volunteers to review the WPIAG draft charter and confirm it is still fit for purpose. Following confirmation of the Charter by the Council, the Small Team recommends launching the call for volunteers for the WPIAG, taking into consideration the Council's upcoming workload. For example, the call for volunteers may need to be postponed if no community bandwidth is available to immediately consider the issues. In the meantime, ICANN org, in conjunction with the EPDP Phase 1 IRT, will need to update relevant terminology pursuant to EPDP Phase 1, Rec. 27. Should no acceptable outcomes develop from the WPIAG, the Small Team finally recommends that the Council initiate an EPDP to either change or terminate the procedure.

Relevant Documents

Link to Charter: <https://gnso.icann.org/sites/default/files/file/field-file-attach/draft-icann-procedure-whois-conflicts-iag-23jan18-en.pdf>

Link to Procedure:

<https://whois.icann.org/en/revised-icann-procedure-handling-whois-conflicts-privacy-law>

Link to Report of Public Comment Report:

<https://www.icann.org/en/system/files/files/report-comments-whois-privacy-law-28jul17-en.pdf>

Letter to Council from ICANN Org:

<https://gnso.icann.org/sites/default/files/file/field-file-attach/atallah-to-bladel-et-al-01aug17-en.pdf>

Link to Resolution:

<https://gnso.icann.org/en/council/resolutions#201702>

Link to Final Report of IAG:

<https://gnso.icann.org/sites/default/files/file/field-file-attach/2016-12/iag-review-whois-conflicts-procedure-26may16-en.pdf>