

xx January 2022

Re: EPDP Phase 1 Recommendation 12

Maarten Botterman,
Chair, ICANN Board

Dear Maarten,

Thank you for your [letter](#) of 23 October 2021, which provides the Board's assumptions regarding the Expedited Policy Development Process (EPDP) on the Temporary Specification Recommendation 12.

Following its receipt of the letter, the Generic Names Supporting Organization (GNSO) Council formed a small team to review the Board's assumptions. The small team identified a few questions and requested an informal meeting with Becky Burr, the board shepherd for the EPDP Phase 1 policy recommendations.

The small team largely agreed with the Board's assumptions; however, it wished to discuss a few potential textual imprecisions with Becky. During the call on Tuesday, 14 December, Becky preliminarily agreed with the small team's conclusions. For ease of reference, the GNSO Council is providing both the Board's seven assumptions and the small team's additional notes following its meeting with Becky below.

1. *The Board understands from the GNSO council letter that "there is a significant legacy of mixed uses and purposes for this field. There is no standardization across the registrar landscape in how this field is utilized." Thus, it is our understanding that the intent of Recommendation 12 is to provide requirements to standardize how the Registrant Organization Field is utilized.*

GNSO Council Response: The GNSO Council agrees with the above assumption; however, in the interest of textual precision, it notes the requirements in Recommendation 12 intend to standardize how the Organization Field is *processed* rather than "utilized".

During her meeting with the small team, Becky indicated this wording change is acceptable.

2. *Standardizing the field will require a transition process for existing registrations. As part of that, Registrars will be required to ask Registrants to confirm the accuracy of the data in that field, determine whether the data should be deleted, and "If necessary, the registration will be re-assigned to the Registered Name Holder."*

GNSO Council Response: The GNSO Council understands the text "if necessary, the registration will be re-assigned to the Registered Name Holder" was intended to refer to the situation in which the deletion of the Registrant Org field may require the contents of one field to be copied and pasted into another field to ensure appropriate contactability. The act of copying the field

contents, however, was not intended to confer or assign legal rights. By way of reference, the EPDP Phase 1 Implementation Review Team, which is currently working on draft consensus policy language, has preliminarily used the terminology “considered as the Registered Name Holder” rather than “re-assigned to the Registered Name Holder.”

During her meeting with the small team, Becky agreed that the term “re-assigned” may imply a change of ownership or legal rights, which the EPDP did not intend. Becky noted the Board had concerns with this language, and the small team discussed potential scenarios wherein deleting field contents may pose an issue. In an effort to address the Board’s particular concern, the small team noted, and the GNSO Council agrees, that as part of the implementation of Recommendation 12, it will be important to inform and educate all registrars that they should retain the registrant data for as long as it is required by ICANN agreements and permissible under relevant law, in order to defend against potential legal claims involving the ownership of domain names.

Lastly, both the GNSO Council and Board understand that the act of copying and pasting field contents is meant only to confirm the value of the Registrant Organization field and should not be construed to require additional accuracy requirements under the Whois Accuracy Program Specification.

- 3. For new registrations, Registrars will be required to treat the Registrant Organization Field as having priority over the Registrant Name Field by considering the data in the Registrant Organization field as the Registered Name Holder. This means that the entity listed in the Organization Field will have the rights and responsibilities of Registered Name Holders (section 3.7.7 of the RAA) such as transferring, renewing and claiming a domain name.*

GNSO Council Response: The GNSO Council understands this to be the intent of the EPDP Phase 1 recommendation and confirms the ICANN Board’s assumption.

- 4. Given the above, and the requirement in section 3.6 of the RAA to escrow the Registered Name Holder data, the implementation of Recommendation 12 with the supplemental guidance will result in a new requirement for the registrar to include the Organization field in its escrow deposits. Ensuring the requirement to escrow the Registrant Organization Field will maintain compliance with principles of security stability and resilience “especially in the rare instance of a registrar failure and transition of registrations from a de-accredited, losing Registrar to a gaining Registrar” as noted in the Council’s 04 March 2021 letter.*

GNSO Council Response: The GNSO Council notes that it is difficult to determine whether Registrars are currently required to transfer the Registrant Organization field to the data escrow provider, and it may be difficult to determine if there is an existing and consistent practice of registrars to transfer this field. Notwithstanding this uncertainty, Recommendation 12 provides that, as part of both the sanitization exercise for existing registrations and the requirements for new registrations after a certain date, where a value is populated in the Organization field, the

Organization is to be “considered” the registered name holder. Accordingly, the GNSO Council recognizes escrow of the Registrant Organization field to be a good practice beginning on the policy effective date, if not already, in order to safeguard registrants in the event of registrar failure.

The GNSO Council does not consider the processing of this field to have any additional legal implications because the GNSO Council believes the transfer of the Registrant Organization field to the escrow provider would fall under Recommendation 1, Purpose 4A "Provide mechanisms for safeguarding Registered Name Holders' Registration Data in the event of a business or technical failure of a Registrar or Registry Operator, or unavailability of a Registrar or Registry Operator, as described in the RAA and RA, respectively."

The GNSO Council requests that ICANN org ensure relevant parties are made aware of this requirement, as appropriate, through the Registration Data Policy and/or applicable data processing agreements.

During her meeting with the small team, Becky indicated the above explanation was acceptable.

- 5. The Board acknowledges the GNSO Council statement that "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" and understands that for existing registrations, deleted values will continue to be required to be maintained in the registrar record of changes to WHOIS information for the duration of the registrar's sponsorship of the domain name and for an additional 2 years per section 1.1 of the Data Retention Specification in the 2013 RAA.*

GNSO Council Response: The GNSO Council understands this to be an existing requirement not affected by the EPDP Phase 1 recommendation and confirms the ICANN Board's assumption.

- 6. The requirement for new registrations is for Registrars to seek consent to publish the value in the Registrant Organization Field. If the Registrant declines publication of the value, the value will remain redacted, but the data will not be deleted.*

GNSO Council Response: The GNSO Council agrees with the Board's assumption; however, in the interest of textual precision, the recommendation uses the words “confirm or correct” rather than “consent” because consent has a specific meaning under the GDPR. Additionally, the GNSO Council notes that this confirmation or correction is not required to occur at the time of registration.

During her meeting with the small team, Becky indicated this wording change is acceptable.

- 7. If the Registrant agrees to the publication of the value, Registrars will publish the value. The Board understands that the language in the Final Report noting that the Registrant Organization field “will be listed as the Registered Name holder” means that the data in*

the Registrant Name field will be treated as a point of contact at the organization, but the labels in the RDDS will not change.

GNSO Council Response: The GNSO Council acknowledges that the text “...will be listed as...” in the EPDP Phase 1 Final Report was imprecise, and, instead, directs the Board to direct the implementation team to the draft text in the EPDP Phase 1 Implementation Review Team’s draft consensus policy language, which properly reflects the intent of the recommendation, where it states that “the Registrant Organization will be considered the Registered Name Holder.”

The GNSO Council would like to thank the Board for the opportunity to engage on this topic and, furthermore, appreciates the opportunity to informally engage with Becky. The informal meeting with Becky proved very helpful. The GNSO Council remains available should there be any further questions.

Sincerely,

Philippe Fouquart
Chair, GNSO Council