

## **COUNCIL VOTE – Initiation of Expedited Policy Development Process on the ICANN Board Temporary Specification on gTLD Registration Data – GNSO Council meeting 19 July 2018**

### **Tatiana Tropina: NCSG Councilor. Statement of abstention**

I would like to make my statement of abstention concerning the vote for the ePDP charter.

I agree that we need to move this charter forward and highly value the work that has been done in such a short time - and I want to thank everyone who walked this way, especially small drafting team for their efforts. I can not vote “no” for this charter because this process should move forward, but I can not vote “yes” for the document that, in my opinion, has parts that are not properly worded and, instead of setting the scope of the ePDP work, set multiple possibilities to get the work sidetracked.

1) First of all, I do not believe that part (j) of the scope section has been properly worded. Neither it addresses all concerns NCSG expressed in the drafting process. For example, the part B of the subsection j1 of the section J uses vague terms. It poses the questions that, first of all, imply by default that issues related to intellectual property protection and consumer protection require the disclosure of personal data. Secondly, it puts cybercrime investigations into the first sub-question together with the intellectual property protection and consumer protection and then puts issue of addressing appropriate law enforcement needs as a second question. This wording fails me: as I am criminal lawyer working in the field of frameworks for cybercrime investigation, I do not see why cybercrime investigations are separated from law enforcement needs and go to the same basket with intellectual property protection as they are on a completely different level of legitimate demands. The third question in the same part B is even more vague: it refers to provision of access based on "legitimate interests not outweighed by the fundamental rights of relevant data subjects". What is this? It can be anything. If the ePDP group is to come with any response, what kind of scope is this? Shall the group come up with exhaustive list of legitimate interests and corresponding frameworks, shall the group just answer the question in general? It is not clear to me. What is clear to me is that vaguely worded text in subsection “j” instead of clearly outlining the scope of ePDP provides for as many interpretations as possible.

2) Secondly, I think we are setting a dangerous precedent by giving other AC/SOs the same weight in reaching consensus in this process - the policy development process on a very important for GNSO issue, and the process that has GNSO as it's home. While I do believe in the critical importance of participation of GAC or ALAC, I do not understand why the group is suggested to be populated in equal numbers by the parts of the community, which have no stake in WHOIS or this ePDP whatsoever. I think we are setting a precedent of creating a de facto CCWG, not PDP - and sacrificing the core policy making processes for the sake of unnecessary and unachievable equality - equality, which would never be given to us, to GNSO by those whom we invited, when it is about their processes. While my stakeholder group will contribute to this ePDP as much as we can no matter what the composition is, I just want to have this on the record.

Again, I would like to say that the drafters did an amazing work and would like to thank wholeheartedly everyone who worked on this. I can acknowledge the significance of this while abstaining from the final vote.