

1 August 2017

RE: Reviews of the Revised ICANN Procedure for Handling Whois Conflicts with Privacy Law

James Bladel, Donna Austin, Heather Forrest
Chair and Vice-Chairs, GNSO Council

Dear Mr. Bladel, Ms. Austin and Ms. Forrest:

Following my letter to you, dated 9 June 2017, I am writing to provide the GNSO Council with an update on your requested assessment of the Revised ICANN Procedure for Handling Whois Conflicts with Privacy Law (Whois Procedure). As I previously shared with you, ICANN organization kicked off your requested review of the Whois Procedure by [publishing for public comment](#) a paper outlining the new Alternative Trigger and soliciting public feedback on its implementation. On 28 July, we published the [staff report](#) of public comments and outlined possible next steps for the GNSO Council to consider.

As noted in the staff report, possible paths forward may include, but are not limited to, the following:

- An expedited policy development process; however, it is likely that this would take at least one year to complete and would focus on the underlying policy recommendations, not the procedure itself. With regard to the timeframe necessary to complete such an expedited PDP, it may not provide contracted parties with immediate relief.
- The Council may also consider a standard PDP, noting that may extend the timeline even further.
- In addition, the GNSO Council may consider incorporating a Contracted Party Request and/or Legal Opinion triggers, as previously discussed by the Implementation Advisory Group (IAG). However, the Council would need to first assess whether these triggers are consistent or not with the underlying policy recommendations noting that these two additional triggers previously did not obtain consensus support from the IAG, which recommended adoption of the Alternative Trigger.
- The Contracted Party Request Trigger requires a contracted party to request for ICANN to investigate whether the request has met the required standard for triggering the procedure by presenting ICANN with a request describing the legal conflict as well as written support from a Data Protection Authority (highly recommended), all other affected registries and/or registrars or justification for why they are the only affected party (mandatory), and a written support or non-objection to the request from the relevant GAC member or relevant government agency if the jurisdiction does not have a GAC member (mandatory).
- The Legal Opinion Trigger consists of a written legal opinion from a nationally recognized law firm stating that national laws or statutes in the country of incorporation of a contracted party will affect its compliance with the provisions of the RAA or other contractual agreement with ICANN dealing with the collection, display or distribution of personally identifiable data via Whois.

Several public comments noted the upcoming May 2018 deadline for compliance with the European Union's General Data Protection Regulation (GDPR). ICANN organization's work to investigate the potential compliance issue because of the GDPR does not replace the multistakeholder policy and implementation development activities underway, including those activities related to reviewing and possibly updating the Procedure.

The options suggested above represent a combination of the comments received on the staff paper. The Council may also consider other paths for proceeding with the review of the Procedure. We are available to discuss any of these options with you, or other suggested paths forward, as requested.

Sincerely



Akram Atallah
President, Global Domains Division
ICANN