

29 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 Generic Names Supporting Organization (GNSO) Council would like to share its views concerning the issues raised in your letter and the steps the GNSO Council is taking to address those issues in light of GNSO Council's remit and the processes described in the Consensus Policy Implementation Framework and Implementation Review Team (IRT) Principles & Guidelines.

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 confirm 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. 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 is reviewing 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 subsequent GNSO Council meetings.

Regarding the Implementation of Recommendation 7 and addressing any potential impasse:

As you know, once consensus policy recommendations are adopted by the Board, the GNSO Council serves as a resource for staff who have questions about the background or intent of the policy recommendations during its implementation. Per Section III. A of the Consensus Policy Implementation Framework, the "GNSO Council may continue to provide input on the implementation of a policy, for example, if the GNSO Council believes that the implementation is inconsistent with the policy".

As noted above, the GNSO Council acknowledges and agrees with the Board's understanding that the recommendations contained in the EPDP Final Report do not specifically 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. ICANN org implements the community's recommendations at the direction of the Board and under the supervision of the CEO (Consensus Policy Implementation Framework at Section III. B.). An IRT is expected to serve as a resource to staff on the

background and rationale of the policy recommendations and return to the GNSO Council for additional guidance as required (Section III. C.).

Additionally, pursuant to Implementation Review Team (IRT) Principles & Guidelines,

In the event of disagreement between ICANN Staff and the IRT or any of its members on the implementation approach proposed by ICANN Staff, the GDD Project Manager, in consultation with the GNSO Council liaison if appropriate, shall exercise all reasonable efforts to resolve the disagreement. Should the disagreement prove irreconcilable despite such efforts, the GNSO Council liaison in consultation with the IRT is expected to make an assessment as to the level of consensus within the IRT on whether to raise the issue with the GNSO Council for consideration, using the standard decision making methodology outlined in the GNSO Working Group Guidelines. If the GNSO Council liaison makes the determination that there is consensus for such consideration, the liaison will inform the GNSO Council accordingly which will deliberate on the issue and then make a determination on how to proceed which could include, for example, the initiation of a GGP, a PDP or further guidance to the IRT and/or GDD staff on how to proceed. This process also applies to cases in which there is agreement between the IRT and GDD staff concerning the need for further guidance from the GNSO Council and/or when issues arise that may require possible policy discussion.

Based upon these established program management guidelines for policy-making and implementation, the GNSO Council is requesting the GNSO Council liaison to engage with the IRT to attempt to resolve the disagreement, and better understand the potential impasse. If the GNSO Council liaison, in consultation with the IRT, determines that there is consensus to raise an issue with the GNSO Council, then the GNSO Council requests, given the technical and detailed nature of this matter, a clear and concise briefing from ICANN org and the GNSO Council liaison detailing the precise nature of the impasse so that the GNSO Council can make an informed determination on how to proceed.

We look forward to continued engagement with the ICANN Board, the IRT, and the broader community on these important issues.

Thank you.

Kind regards,

Pam Little and Rafik Dammak
GNSO Council Vice-Chairs