

21 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 provide the Board's assumptions regarding Expedited Policy Development Process on the Temporary Specification (EPDP) 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 came away with a few clarifications and questions and requested an informal meeting with Becky Burr, the board shepherd for EPDP Phase 1 recommendations.

The small team noted the Council largely agrees with the Board's assumptions; however, the small team noted a few textual imprecisions during its call with Becky. Becky preliminarily agreed with the small team's conclusions, which were discussed in detail on Tuesday, 14 December. For ease of reference, the Council is providing the Board's seven assumptions and the Council's additional notes in response 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.*

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

Council Response: The GNSO Council understands the text "if necessary, the registration will be re-assigned to the Registered Name Holder" was intended to mean that contents of one field will be copied and pasted into another field. The act of copying field contents, however was not intended to confer or assign legal rights. For reference, the working document from the EPDP Phase 1 Implementation Review Team, which is under review and subject to change, currently uses the term

“considered as the Registered Name Holder” rather than “re-assigned to the Registered Name Holder.”

Becky noted agreed that the term “re-assigned” may imply a change of ownership or legal rights, which the EPDP did not intend. Becky and the Small Team discussed potential chain of custody issues with respect to the registrant of the domain name, and in order to address the Board’s concern, the Council notes, as part of the implementation of Recommendation 12, it is important to inform all registrars that they should retain the registrant data as long as they are entitled to, under the law, in order to defend against potential legal claims.

Lastly, both the 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 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 practice of registrars to transfer this field. Notwithstanding this uncertainty, the EPDP-P1 recommendation provides that, as part of both the sanitization exercise for existing registrations and the requirements for new registrations, where a value is populated in the Organization field, the Organization is to be “considered” the registered name holder. Accordingly, the 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 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.

- 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 the meeting with Becky, Becky confirmed 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 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 also very much appreciates the opportunity to informally engage with Becky, as this meeting proved very helpful. The GNSO Council remains available should there be any further questions.
Sincerely,

Philippe Fouquart
Chair, GNSO Council

