

18 June 2019

RE: Planned ICANN org Communications to European Data Protection Board Regarding the Expedited Policy Development Process

Keith Drazek, Chair, GNSO Council
Janis Karklins, Chair, EPDP

Dear Keith and Janis,

As noted in a previous [blog](#), ICANN org had originally anticipated sending questions to the European Data Protection Board (EDPB) following the closure of the public comment period on the Expedited Policy Development Process (EPDP) on the Temporary Specification for gTLD Registration Data team's [Final Report](#) on its Phase 1 recommendations, prior to ICANN Board consideration. As the EPDP's policy recommendations closely align with the Temporary Specification, ICANN org does not believe that additional EDPB guidance related to the Phase 1 recommendations should be solicited at this time.

As you are aware, the ICANN Board of Directors recently adopted 27 of the 29 GNSO Council Policy Recommendations for a new Consensus Policy on gTLD Registration Data ("Registration Data Policy") as set forth in the EPDP Team's [Final Report](#), in accordance with the scorecard titled "[Scorecard: EPDP Phase 1 Recommendations](#)." The EPDP Team's Phase 1 recommendations built upon and refined the [Temporary Specification for gTLD Registration Data](#) (Temp Spec), [which mapped to the so-called "Calzone Model."](#) Like the Calzone Model, the Temp Spec aimed to ensure the continued availability of registration data to the greatest extent possible while maintaining the security and stability of the Internet's system of unique identifiers, as outlined in ICANN's [mission and bylaws](#). The Temp Spec provided a single, unified interim model that ensured a common framework for registration data directory services. It allowed registrars and registries to continue with the robust collection of registration data from both natural and legal persons, as well as technical information, in connection with domain name registrations.

Like the Calzone Model and the Temp Spec, upon which the [Interim Registration Data Policy for gTLDs](#) is based, the new Registration Data Policy for gTLDs will require registrars to collect full, thick registration data from registrants; it will require registries and registrars to deposit registration data with a data escrow agent; and it will require registries and registrars to respond to requests from third parties to access non-public registration data. The Registration Data Policy will further refine the approach taken in the Temp Spec and the Calzone Model, for example, to no longer require the collection of administrative and technical contact information and to reduce from two years to 18 months the required period for registrars to retain registrant contact data. The EDPB and the Article 29 Working Party ("WP29") have provided guidance to

ICANN on these topics throughout the process leading up to the Board's adoption of the Phase 1 recommendations. We note that the EPDP also took this guidance into consideration during its discussions.

ICANN org and the community as a whole are continuing to consider issues under the EU's General Data Protection Regulation, such as (a) how the concepts of joint and independent controllership apply to our multi-stakeholder model and (b) related to the relationship between the initial purposes of collection and processing of registrant data and disclosure of that data to third parties with legitimate interests. ICANN org notes the EDPB's [endorsement of the WP29's statement](#) regarding WHOIS, and does not believe that requesting additional EDPB focus on this issue at this stage is necessary.

The EDPB also commented on these topics in its [5 July 2018 letter](#) to ICANN org and has encouraged ICANN to move ahead in the development of an access model: "ICANN and the registrars/registries are, as controllers, responsible for ensuring that personal data processed in the context of WHOIS are only disclosed to third parties with a legitimate interest or other lawful basis under the GDPR, also taking into account the other requirements of the GDPR. This implies putting in place an appropriate access model, with appropriate safeguards, including measures to ensure a sufficient degree of compliance assurance. The responsibility for designing a model that will provide this assurance is in the first instance up to ICANN and the registrars/registries." As a result, ICANN org believes that instead of sending additional questions to the EDPB at this stage, we should wait to seek further guidance when new questions are identified, which is likely to occur in Phase 2.

As I previously [communicated](#) to Janis, my team will engage with the EPDP as we pursue discussions with the EDPB. The work of the EPDP is critical for the development of a Standardized System for Access/Disclosure (SSAD) in Phase 2. As this is the focus of the next phase of work, it may be prudent to seek the EDPB's advice on such a model in future communications for the EPDP to develop a policy that can ensure alignment with the law and previous statements from data protection authorities. For example, the WP29 statement said that the WP29 expected ICANN to develop and implement a model that will enable legitimate uses by relevant stakeholders, such as law enforcement, of personal data concerning registrants in compliance with the GDPR, without leading to an unlimited publication of those data.

ICANN org's work to explore a Unified Access Model based on the Technical Study Group's [Technical Model for Access to Non-Public Registration Data](#) is meant to serve as an input to the EPDP's Phase 2 discussions on policy for a SSAD. Our goal with this work is to provide the EPDP with a legal framework for how such a model may be built. It is up to the EPDP to determine whether and how to make policy recommendations as they relate to any model.

I hope that this update is helpful. If the GNSO Council would like to further discuss this matter ICANN org is glad to do so at your earliest convenience.

Sincerely,



Göran Marby
President and Chief Executive Officer
Internet Corporation for Assigned Names and Numbers (ICANN)