ICANN BOARD PAPER NO. 2021.06.21.2a

TITLE:	GNSO Council Policy Recommendations on EPDP Phase 2, Priority 2 Recommendations
PROPOSED ACTION:	For Board Consideration and Approval

EXECUTIVE SUMMARY:

The Board is being to ask to approve a subset of the policy recommendations from the Expedited Policy Development Process ("EPDP") Team's Phase 2 Final Report. The EPDP Team categorized the Phase 2 recommendations as either "Priority 1", which are recommendations related to the System for Standardized Access/Disclosure or "SSAD", or "Priority 2", which are recommendations related to the Team's Phase 1 work on the Temporary Specification. The Board is being asked to approve the four Priority 2 recommendations, which provide policy guidelines for (i) public display of information related registrations using privacy/proxy services; (ii) display and redaction of the registant's city; (iii) required minimum period for registrars to retain registration data, and (iv) an additional ICANN purpose for processing registration data, related to the security, stability, and resiliency of the DNS. The recommendations were all unanimously approved by the Generic Names Supporting Organization (GNSO) Council at its meeting on 24 September 2020.

STAFF RECOMMENDATION:

The purpose of this paper is to recommend Board approval of the EPDP Phase 2 Priority 2 recommendations (recommendations 19 – 22). Approval of the recommendations will assist ICANN org in implementing EPDP Phase 1 recommendations. All necessary steps of the process to this point have been satisfied, and ICANN org recommends full Board approval of the EPDP Phase 2 Priority 2 recommendations.

PROPOSED RESOLUTION:

Whereas, on 17 May 2018, the ICANN Board adopted the Temporary Specification for gTLD Registration Data (Temporary Specification) pursuant to the procedures in the

Registry Agreement and Registrar Accreditation Agreement concerning the establishment of temporary policies;

Whereas, following the adoption of the Temporary Specification, and per the procedure for Temporary Policies as outlined in the Registry Agreement and Registrar Accreditation Agreement, a Consensus Policy development process as set forth in ICANN's Bylaws must be initiated immediately and completed within a one-year time period from the implementation effective date (25 May 2018) of the Temporary Specification;

Whereas, the Generic Names Supporting Organization (GNSO) Council approved the Expedited Policy Development Process (EPDP) Initiation Request (https://gnso.icann.org/sites/default/files/file/field-file-attach/temp-spec-gtld-rd-epdp-initiation-request-19jul18-en.pdf) and the EPDP Team Charter (https://gnso.icann.org/sites/default/files/file/field-file-attach/temp-spec-gtld-rd-epdp-19jul18-en.pdf) on 19 July 2018;

Whereas, the EPDP Team divided the work in two phases; Phase 1 completed with the adoption of the EPDP Phase 1 Final Report on 4 March 2019, at which point the GNSO Council indicated its non-objection, as required per the EPDP Team Charter, for the EPDP Team to commence work on a System for Standardized Access/Disclosure to Non-Public Registration Data ("SSAD") as well as other topics identified in Phase 2 of the Charter and/or carried over from Phase 1 (priority 2 items);

Whereas, the EPDP Team commenced its deliberations on Phase 2 on 2 May 2019 with the development of its work plan (see https://community.icann.org/x/6BdIBg);

Whereas, the EPDP has followed the prescribed EPDP steps as stated in the Bylaws, resulting in a Final Report delivered on 31 July 2020 with an updated version containing all minority statements submitted on 26 August 2020;

Whereas, the EPDP Team reached consensus on Recommendations 19 – 22;

Whereas, the GNSO Council reviewed and discussed the recommendations of the EPDP Team and unanimously approved all Priority 2 Recommendations on 24 September 2020 by a GNSO Supermajority vote (see https://gnso.icann.org/en/council/resolutions/2020#20200924-2);

Whereas, the GNSO Council vote exceeded the required voting threshold set forth in the ICANN Bylaws to impose new Consensus Policies on ICANN contracted parties;

Whereas, after the GNSO Council vote, a public comment period was held on the approved Recommendations, and the majority of comments focused on issues that were the subject of lengthy debates during the EPDP Team's Phase 1 amd Phase 2 work and the Recommendations on these topics represent carefully crafted compromises;

Whereas, the Governmental Advisory Committee (GAC) was requested to raise any public policy concerns that might occur if the proposed policy is adopted by the Board (https://www.icann.org/en/system/files/correspondence/botterman-to-ismail-10feb21-en.pdf);

Whereas, the GAC responded to the Board's notice, and did not raise any public policy concerns that might occur if the recommended Consensus Policy recommendations are adopted by the Board;

Whereas, ICANN org analyzed the Recommendations and, based on current information and subject to further inputs from Data Protection Authorities and legal analysis, believes Recommendations 19-22 do not appear to be in conflict with (a) the GDPR, (b) existing requirements for gTLD registry operators and registrars, or (c) ICANN's mandate to ensure the stability, security, and resiliency of the Internet's DNS;

Resolved (2021.06.21.xx), the Board adopts the GNSO Council Policy Recommendations 19-22 for a new Consensus Policy on gTLD Registration Data as set forth in section 3.6 of the Final Report.

Resolved (2021.06.21.xx), the Board directs the President and CEO, or his designee(s), to develop and execute an implementation plan for the adopted Recommendations that is consistent with the guidance provided by the GNSO Council and to continue communication with the community on such work.

PROPOSED RATIONALE:

Why is the Board addressing this issue now?

The GNSO Council approved all of the final recommendations from the EPDP Working Group's Final Report dated 31 July 2020 at its meeting on 24 September 2020, and a Recommendations Report from the Council to the Board on the topic on 29 October 2020. In accordance with the ICANN Bylaws, a public comment period was opened to facilitate public input on the adoption of Recommendations 19-22. The public comment period closed on 22 January 2021. As outlined in Annex A of the ICANN Bylaws, the EPDP recommendations are now being forwarded to the Board for its review and action.

What are the proposals being considered?

The GNSO's recommendations concern policy guidelines for (i) public display of information related to registrations using privacy or proxy services; (ii) display and redaction of the registant city field; (iii) required minimum period for registrars to retain registration data, and (iv) an amended ICANN purpose for processing registration data, related to the security, stability, and resiliency of the DNS. The full list and scope of the final recommendations can be found in Annex A of the GNSO Council's Recommendations Report to the Board (see https://www.icann.org/en/system/files/correspondence/fouquart-to-botterman-29oct20-en.pdf).

What significant materials did the Board review?

As required by the GNSO's PDP Manual, the EPDP Team reached out to all GNSO Stakeholder Groups and Constituencies as well as other ICANN Supporting Organizations and Advisory Committees for input during the early phase of the EPDP. The Working Group also held open community sessions at the ICANN Public Meetings that occurred during the lifetime of this PDP. In recognition of the condensed timeline the EPDP Team would be working under, the GNSO Council chose to invite two liaisons from ICANN Organization to participate directly within the EPDP Team: one liaison from ICANN's Legal Team and one liaison from ICANN's Global Domains and

Strategy Division. The EPDP Team also sought input on potential implementation issues from ICANN org via the appointed liaisons. Public comment periods were opened for the the EPDP Team's Initial Report, the EPDP Team's Addendum to its Initial Report and the GNSO Council's adoption of the EPDP Team's Final Report. The final recommendations as detailed in the Final Report were completed based on the EPDP Team's review and analysis of all the public comments and input received in response to its Initial Report.

What factors did the Board find to be significant?

The EPDP Team's Priority 2 recommendations were developed following the GNSO Expedited Policy Development Process as set out in Annex A of the ICANN Bylaws and have received the unanimous support of the GNSO Council. As outlined in the ICANN Bylaws, the Council's supermajority support obligates the Board to adopt the recommendations unless, by a vote of more than two-thirds, the Board determines that the recommended policy is not in the best interests of the ICANN community or ICANN. The Bylaws also allow for input from the GAC in relation to public policy concerns that might be raised if a proposed policy is adopted by the Board. The GAC has not raised this possibility with respect to these EPDP recommendations.

Are there positive or negative community impacts?

The Priority 2 recommendations result in the following positive impacts to the ICANN community: (i) ensuring that third-party requestors of non-public registration data are clearly notified, within the public directory, that a domain name registration is utilizing privacy or proxy services, and, accordingly request the redacted data only once (rather than having to perform two queries: one – to find out the data is protected by a privacy service, and another to the privacy service); (ii) permitting registrars to publish the registrant's city field in the public directory (Phase 1 recommendation required redaction of the registrants city in the public directory); (iii) establishing a required data retention period for registration data held by registrars; (iv) updating ICANN's purpose for processing registration data in line with security, stability, and resiliency concerns, in response to feedback from the European Data Protection Board. Additionally, the Board's approval of the Priority 2 recommendations will assist ICANN org in implementing the EPDP Phase 1 recommendations.

Are there fiscal impacts/ramifications on ICANN (Strategic Plan, Operating Plan, Budget); the community; and/or the public?

There may be fiscal impacts on ICANN associated with the implementation of policy recommendations. These would be related to the use of ICANN org resources to implement the recommendations.

Are there any Security, Stability or Resiliency issues relating to the DNS?

There are no security, stability, or resiliency issues relating to the DNS that can be directly attributable to the implementation of the EPDP recommendations.

Signature Block:

Submitted by:

Position:

Date Noted:

Email:

FORMATTING INSTRUCTIONS:

Font to be used is Times New Roman – 12 pt.

All headings will be all capital letters and bold.

The actual Title and Proposed Action will be initial capital letters and bold.

The text will be spaced 1.5 lines apart.

The Board Paper Number will always start with the date separated by dashes – for example, 2016-11-08-xx (xx to be assigned by the Secretary).

The Resolution Number will always start with the date separated by periods – for example, 2016.11.08.xx (xx to be assigned by the Secretary).

The whereas and resolved paragraphs shall be separated by 2 lines.

The word "Resolved" shall be initial capitals only.

When the document is saved, the shortened title of the Board Paper should appear in the name of the document.

ICANN BOARD PAPER NO. 2021.06.21.2b

TITLE: **Deferral of the third Generic Names Supporting Organizational Review (GNSO3)**

PROPOSED ACTION: **For Board Consideration and Approval**

EXECUTIVE SUMMARY:

The Board is being asked to consider the Organizational Effectiveness Committee's (OEC) recommendation for a deferral of the GNSO3 Review, with support of the GNSO. The Board is also being asked to direct the ICANN organization to develop a comprehensive plan for the next cycle of Organizational Reviews, in light of the pending ATRT3 recommendations that will likely impact the future scope of Organizational Reviews.

The Organizational Reviews are an integral part of ICANN's multistakeholder model to ensure transparency, accountability, and improve performance of supporting organizations and advisory committees (SO/ACs), as prescribed in Article 4 section 4.4 of the ICANN Bylaws. Under the ICANN Bylaws, the Board has the ability to defer Organizational Reviews beyond the five-year cycle, if conducting a review in that cycle is not feasible. The GNSO3 Review, due to initiate in June 2021, is the first of the next full cycle of Organizational Reviews.

For all upcoming Organizational Reviews, there is a dependency on, and an expected impact from, the implementation of ICANN Board-approved recommendations related to the design of the Organizational Review process, as made by the third Accountability and Transparency Review Team (ATRT3). Specifically as it relates to the GNSO3 Review, consultation with the GNSO on the possibility of deferring GNSO3 Review indicated broad support for this Board action, considering the significant workload the GNSO is currently managing.

ORGANIZATIONAL EFFECTIVENESS COMMITTEE (OEC) RECOMMENDATION:

In its capacity of overseeing the Organizational Review process, the OEC recommends that the Board defer the start of the GNSO3 Review, as it is not feasible to proceed with

the GNSO3 Review at this time, considering the GNSO workload and the need to plan for changes to the Organizational Review processes in light of ATRT3 recommendations. The OEC further recommends that the Board direct the ICANN organization to develop a proposal, to more comprehensively address the next Organizational Review cycle, of which the GNSO3 Review would be the first.

PROPOSED RESOLUTION:

Whereas, under ICANN Bylaws Section 4.4 (a), periodic reviews shall be conducted no less frequently than every five years, based on feasibility as determined by the Board.

Whereas, under ICANN's Bylaws Section 4.4 the GNSO3 Review is due to commence in June 2021, five years after the Board's receipt and action on the final report from the GNSO2 Review. This is the first Organizational Review scheduled for the next cycle.

Whereas, the ATRT3 made recommendations that will have an impact on all Organizational Reviews; and the ATRT3 recognized this impact in its transmittal letter to the ICANN Board Chair. The letter suggested the Board implement a moratorium on launching new reviews until the ATRT3 recommendations establish continuous improvement programs and a new Holistic Review could be implemented.

Whereas, the Board approved the ATRT3 recommendations, subject to prioritization, recognizing that the ICANN community and organization will need time to plan for, and execute, those recommendations once prioritized for implementation.

Whereas, the Board engaged with the GNSO in October 2020 to understand its views about the timing of the next GNSO Review. The GNSO Council, the Commercial Stakeholder Group, the Registry Stakeholder Group, and the Registrar Stakeholder Group each supported the deferral of the GNSO3 Review to alleviate the GNSO's heavy workload, and to allow for the ATRT3's recommended Holistic Review and continuous improvement pilots and program to be developed in line with the Board's November 2020 action on the ATRT3 recommendations.

Resolved (2021.06.21.xx), the Board determines that it is not feasible to initiate the GNSO3 Review at this time. The Board is deferring the initiation of the GNSO3 Review until such time as the Board, community and org better understand the impact

of the ATRT3 Recommendations on the next Organizational Review cycle, as well as in consideration of the current community workload.

Resolved (2021.06.21.xx), the Board directs the ICANN President and CEO, or his designee, to develop a comprehensive plan for the timing and conduct of the next Organizational Review cycle, taking into consideration the timing of the implementation of the ATRT3 recommendations. This plan should be developed in consultation with the ICANN community, and ICANN org shall provide periodic updates to the Board on progress towards such plan.

PROPOSED RATIONALE:

Why is the Board addressing the issue?

ICANN organizes independent reviews of its SO/ACs (Organizational Reviews) as prescribed in [Article 4 Section 4.4](#) of the ICANN Bylaws, to ensure ICANN's multistakeholder model remains transparent and accountable, and to improve its performance. The Organizational Reviews currently run in five-year cycles. The GNSO3 Review is the first of the next cycle, and is due to initiate in June 2021. Under the Bylaws, the Board has the ability to defer Organizational Reviews beyond the five-year cycle if conducting a review in that cycle is not feasible.

For the GNSO3 Review and all upcoming Organizational Reviews in this next cycle, there is a dependency on, and an expected impact from, the implementation of ICANN Board-approved ATRT3 recommendations. Specifically, ATRT3 Recommendation 3 calls for evolving the current Organizational Reviews into continuous improvement programs for SO/ACs, and introduces a new Holistic Review to consider the effectiveness of the continuous improvement programs, accountability of SO/ACs, and their continuing purpose and structure.

In addition, there is a continued pressure on community volunteer time. Currently, various cross-community work efforts are underway, all of which consume considerable volunteer time from the GNSO community. Deferring the GNSO3 Review will enable the GNSO, along with the broader ICANN community, to understand the

potential impact of the recommendations from the ATRT3 as their implementation planning becomes clearer.

This Board action is a result of the Board's consideration of various factors including: consultation on GNSO3 Review timing, current community workload, as well as the upcoming implementation of ATRT3 recommendations. Based upon those considerations, the Board has concluded that it is not feasible to proceed with the GNSO3 Review as scheduled. This action also directs ICANN org to develop a plan of how to address the upcoming Organizational Review cycle prior to implementing the ATRT3 recommendations, including community consultation, and would set a time limit for bringing the issue back to the Board.

What is the proposal being considered?

The proposal under consideration is to defer the GNSO3 Review based upon the determination that the review is not feasible at this time. The Board is being asked to defer the initiation of GNSO3 Review until the Board, community, and organization better understand the implications of ATRT3 recommendations and in consideration of the current GNSO workload. To further collective understanding of the implications of ATRT3 recommendations, the Board is asked to direct ICANN org, in consultation with the community, to develop a comprehensive plan for the timing and conduct of the next Organizational Review cycle. ICANN org shall provide an update to the Board on progress towards such plan.

Which stakeholders or others were consulted?

In a transmittal letter to the Board on 01 June 2020, the ATRT3 "strongly suggests that the ICANN Board implement a moratorium on launching any new Organizational and Specific Reviews until it has made a decision on this recommendation."

In a letter on 12 October 2020, the Chair of the ICANN Board reached out to GNSO Council and GNSO Stakeholder Groups and Constituency Leaders to understand the GNSO community's views about the timing of the GNSO3 Review. The Commercial

Stakeholder Group, the Registry Stakeholder Group, the GNSO Council, and the Registrar Stakeholder Group responded to the letter.

What concerns, or issues were raised by the community?

The Commercial Stakeholder Group (CSG) reported its view that the GNSO3 Review depends entirely on the scoping of the Holistic Review recommended by ATRT3, and offered to contribute to the Holistic Review scoping process. The CSG also acknowledged the large volume of work currently underway and waiting to be initiated within the GNSO as a reason to support the deferral.

The Registry Stakeholder Group (RySG) supported the suggested GNSO3 Review deferral and ATRT3's suggestion that the Board implement a moratorium on launching any new Organizational or Specific Reviews until it has reached a decision on the ATRT3's recommendation on Reviews. In addition, the RySG indicated that it would not make sense to initiate the GNSO3 Review until it is clear how ATRT3 recommendations will be implemented.

The GNSO Council supported the suggested deferral of the GNSO3 Review, mindful of the potential impact of the recommendations from ATRT3, and the full slate of policy development work underway.

The Registrar Stakeholder Group agreed with postponing the GNSO3 Review to allow for the Holistic Review, to permit resources to be directed at other pressing priorities, and to take into consideration the unique circumstances created by the COVID-19 pandemic.

What factors did the Board find to be significant?

The Board considered its prerogative to defer Organizational Reviews based on feasibility. The Board also considered the dependency on prioritization and implementation of the ATRT3 recommendations which will impact the Organizational Reviews cycle. Considering the GNSO3 Review is the first review of the next Organizational Review cycle, this deferral provides an opportunity for ICANN org, in consultation with the community, to develop a comprehensive plan for the timing and conduct of the next Organizational Review cycle, considering the timing of the

implementation of the ATRT3 recommendations. ICANN org shall provide an update to the Board on progress towards such plan.

Additionally, the Board considered the precedents set by the GNSO2 Review in 2013, a ccNSO2 Review in 2017.

Are there positive or negative community impacts?

This Board action is expected to have a positive impact on the community by reducing the pressure on GNSO's volunteer time, considering the high volume of on-going GNSO work efforts. In addition, the deferral will allow for the development of a comprehensive plan to address the next cycle of Organizational Reviews, considering the implications of ATRT3 recommendations. This will have a positive impact on the overall community work through planning.

Are there fiscal impacts or ramifications on ICANN (strategic plan, operating plan, budget); the community; and/or the public?

The fiscal impacts on ICANN are positive in the sense that the budget set aside for this review will be used when deemed appropriate to result in an effective outcome to benefit the GNSO, and the ICANN community in line with the intentions of the ATRT3. Conducting more comprehensive planning for the timing and conduct of the next Organizational Review cycle will have a positive impact on the overall planning and resourcing effort for ICANN as a whole.

There is a benefit in deferring the additional work of an Organizational Review for the GNSO and ICANN community considering the scope of that work is unclear, pending further planning to better understand implications of the ATRT3 recommendations.

Are there any security, stability or resiliency issues relating to the DNS?

This Board action is not expected to have a direct effect on security, stability or resiliency issues relating to the DNS.

How is this action within ICANN's mission and what is the public interest served in this action?

The Board's action is consistent with ICANN's commitment pursuant to section 4.1 of the Bylaws to ensure ICANN's multistakeholder model remains transparent and accountable, and to improve the performance of its SO/ACs. This action will serve the public interest by fulfilling ICANN's commitment to maintaining and improving its accountability and transparency and by allowing the ICANN's Supporting Organizations and Advisory Committees to devote the proper resources to considering their accountability and ongoing purpose in the ICANN system.

Is public comment required prior to Board action?

No public comment is required.

Signature Block:

Submitted by: Theresa Swinehart

Position: Senior Vice President, Global Domains Services (GDS)

Date Noted: XX May 2021

Email: theresa.swinehart@icann.org