

30 April 2019

Cyrus K. Namazi
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ICANN

Dear Cyrus

Re: Implementation of PPSAI Working Group Recommendations

Thank you for your letter of 4 March 2019 to the GNSO Council Leadership Team.

The GNSO Council appreciates the update on the status of the ICANN org's implementation of policy recommendations from the Privacy and Proxy Service Provider Accreditation Issues Working Group (PPSAI) and the opportunity to provide feedback.

As you may know, this topic was included in the agenda for the 13 March 2019 Council meeting held in Kobe. Based on the Council meeting discussion, please find below Council's response to the two issues raised in your letter:

1. Whether ICANN org should continue to delay public comment and implementation of PPSAI or take additional steps pending completion of the EPDP in consultation with the PPSAI Implementation Review Team (IRT)

As pointed out in your letter, community viewpoints on this are inconsistent, so are those among the Councilors:

- Some Councilors agreed that the PPSAI implementation work should continue to pause for the reasons outlined in your letter and for the lack of volunteer resources (in order to meet the ever-increasing demand of the on-going PDPs, EPDP Phase 2 and EPDP Phase 1 Implementation).
- Some Councilors felt strongly that the PPSAI implementation work should resume, as there have been significant delays due to the need to seek legal advice and pending conclusion of EPDP Phase 1 work. Now that EPDP Phase 1 is complete, it is unclear as to why the implementation is interdependent with the EPDP Phase 2 outcome. Some Councilors also noted the negative impact on ICANN's reputation and credibility if ICANN is not seen as expeditiously implementing approved multi-stakeholder policies.

Given the divergent views among Councilors and considering the respective roles of ICANN Org in leading implementation work of consensus policy recommendations and the PPSAI IRT in overseeing the implementation work, the GNSO Council considers it appropriate to defer the decision on this issue to ICANN org and the PPSAI IRT, taking into account the various views of the SOs and ACs.

As discussed during the GNSO Council meetings in Kobe, the Council notes that a detailed analysis on elements of the implementation work that are impacted by GDPR and interdependent with the EPDP outcome would be helpful to the Council and the GNSO community and encourages ICANN org to carry out such analysis as soon as possible.

2. Whether ICANN org should take any steps related to the Transfer Policy issue that the GNSO Council referred to the PPSAI IRT in November 2017.

Considering the origin and the nature of this topic, the GNSO Leadership Team has sought feedback from the Registrar Stakeholder Group (RrSG). It is our understanding that the RrSG has no issue with the original approach and timeline, being “only after the upcoming PPSAI IRT comment period”. However, the RrSG has brought to the Council’s attention the need to further clarify the scope of the referral to the PPSAI IRT and to broaden the scope of the compliance deferral.

Specifically, the request for the referral and the compliance deferral originated from a letter from the GNSO Council to the ICANN Board dated 1 December 2016 <https://gns0.icann.org/sites/default/files/file/field-file-attach/bladel-to-crocker-01dec16-en.pdf>. In that letter, the GNSO Council requested the ICANN Board to:

*“(1) instruct staff to work with the RrSG and other interested parties to evaluate alternatives for evaluation of the implementation concerns, which could include moving this issue to the PPSAI IRT, reconstituting the IRTP-C IRT, or employing some other new mechanisms under Policy & Implementation, and (2) instruct ICANN staff to defer any privacy/proxy service compliance enforcement from the Transfer Policy relating to **the enabling or disabling of privacy/proxy services** pending further consultation and determination of this issue.”*

As it transpired, the language in (2) above was far too narrow as it did not cover other use cases and implementation concerns outlined by the RrSG, such as the scenario where “Underlying Registrant Data Change Without Privacy/Proxy Service Change” (see #(2) in Appendix A to that letter).

The subsequent Board resolution persisted with the narrow language <https://features.icann.org/approval-gns0-council-request-ceo-registrar-stakeholder-group-evaluate-alternatives-implementation>:

*“... (2) instruct ICANN Org to defer any privacy/proxy service compliance enforcement from the Transfer Policy relating to **the enabling or disabling of privacy/proxy services** pending further consultation and determination of this issue.”*

The narrow language that limited the issue to the addition/removal of a privacy/proxy service was repeated in the GNSO Council motion and resolution 20171130-2 <https://gns0.icann.org/en/council/resolutions#201711>

*“1. The Generic Names Supporting Organization (GNSO) Council sent a letter (see <https://gns0.icann.org/en/correspondence/bladel-to-crocker-01dec16-en.pdf>) to the ICANN Board on 1 December 2016 regarding implementation concerns with the Inter-Registrar Transfer Policy (“Transfer Policy”) – Part C for privacy/proxy registrations. **Specifically, the concerns relate to whether the addition/removal of a privacy/proxy service potentially triggers the 60-day inter-registrar transfer lock described in the updated Transfer Policy.***

....

Resolved:

1. *The GNSO Council directs the PPSAI IRT to consider the issue of privacy/proxy registrations and IRTP Part C as outlined in the annex to the GNSO Council letter (see <https://gnso.icann.org/en/correspondence/bladel-to-crocker-01dec16-en.pdf>) and to put forward recommendations for implementation that are consistent with the IRTP Part C policy recommendations as well as the PPSAI policy recommendations.”*

Based on the above chronology and documents, it seems clear that there were a number of implementation concerns with the Transfer Policy Part C for privacy/proxy registrations, and the addition/removal of a privacy/proxy service was only one of them.

According to the RrSG, the narrow language used in the various documents has created significant compliance issues for many ICANN-accredited registrars. Furthermore, the PPSAI IRT will also benefit from clarity on the scope of the referral before it commences its work.

As such, the GNSO Council recommends that ICANN org conduct a review of the relevant documents, correspondence and communications and work with the RrSG and other interested parties to further clarify the scope of referral to the PPSAI IRT and broaden the compliance deferral.

We hope you find the above helpful.

Sincerely

Keith Drazek, GNSO Council Chair

Rafik Dammak, GNSO Council Vice Chair, Non-Contracted Parties House

Pam Little, GNSO Council Vice Chair, Contracted Parties House