

GNSO Council feedback – Board consultation - RySG team members

The following is RySG team member feedback for the GNSO council per request from GNSO council chair Keith Drazek to help inform their consultation with the ICANN Board resulting from the board's partial acceptance of recommendation 1 and 12 of the ePDP phase 1 final report.

We understand that the likely outcome of any council/board consultation is that for recommendation 1 and 12, the council may ask the board to reconsider the recommendations as is, may submit modifications to the recommendations for the board to consider or the council may accept the board's partial acceptance of those two recommendations.

We further note the ICANN Board resolution and accompanying scorecard includes responses intended for the ePDP. These should be tracked and considered during our phase 2 deliberations as appropriate.

Letter from Chalaby to Drazek on board action:

<https://www.icann.org/en/system/files/correspondence/chalaby-to-drazek-15may19-en.pdf>

ICANN Board resolution:

Preliminary report:

<https://www.icann.org/resources/board-material/prelim-report-2019-05-15-en>

Scorecard:

<https://www.icann.org/en/system/files/files/epdp-scorecard-15may19-en.pdf>

Approved Resolution:

<https://www.icann.org/resources/board-material/resolutions-2019-05-15-en>

Recommendation #1 (Purpose 2)

Clearly the ICANN board considered the correspondence with the European Commission on the final report.

Initial comments:

<https://mm.icann.org/pipermail/comments-epdp-recs-04mar19/attachments/20190417/6f0a65b2/CommentsontheTemporarySpecificationforGTLDRRegistrationDataPolicyRecommendations-0001.pdf>

Follow-up questions from Goran:

<https://www.icann.org/en/system/files/correspondence/marby-to-odonohue-26apr19-en.pdf>

Response to Goran from Pearse O'Donohue:

<https://www.icann.org/en/system/files/correspondence/odonohue-to-marby-03may19-en.pdf>

The RySG team would like to remind the working group of our feedback on purpose 2 the text of which was included in the phase 1 final report at page 166:

2) Purpose 2

The RySG supports the inclusion of Purpose 2 in the Final Report.

However, the RySG notes that it expresses such support with the understanding, and continued reminder to the EPDP Team, that Purpose 2 does not qualify as a legal “Purpose” as defined in the GDPR. We also remind the EPDP Team of the advice of the European Data Protection Board^[1], which cautions against conflating ICANN’s purposes with those of third parties. The RySG believes this conflation continues to be at the root of the confusion regarding Purpose 2.

Along with the above statement, we make the following observations:

- The RySG accepts the current Purpose 2 is a placeholder statement that may be impacted by additional analysis conducted during Phase 2.
- The RySG concurrently accepts that, regardless of the inclusion of Purpose 2, requests for disclosure may legally be made to all contracted parties under the terms of GDPR (Art 6(1)). We restate that such disclosure requests do not require a ‘Purpose’ for disclosure.
- We also accept that, in line with the GDPR, disclosure of data may only be granted where a requester establishes a valid legal basis, demonstrates sufficient necessity and, where applicable, that the balance of the data subject’s rights has been duly considered. Such a decision to disclose MUST lie solely with the Contracted Party of whom the request has been made.

Therefore, noting the above, the spirit of Purpose 2 remains agreeable to the RySG, and as such, we shall not seek to object to its publication in the final report.

[1] Letter from jelinek to marby, 5th July, 2018 -

<https://www.icann.org/en/system/files/correspondence/jelinek-to-marby-05jul18-en.pdf>

It’s also important to note that the Board did adopt recommendation #3 in which the ePDP team agrees to make a recommendation on standardized/lawful disclosure of non-public registration data (in line with purpose #2). Also adopted was recommendation #18 which recommends a new policy “Reasonable Requests for Lawful Disclosure of Non-Public Registration Data” which may be revised or superseded by the work in phase 2.

Given the above data points, the RySG team suggests that the GNSO Council accept the ICANN Board’s treatment of recommendation #1. It does not seem to materially impact the implementation of the phase 1 recommendations.

The RySG team does not support any effort to modify the text of Purpose 2 to gain adoption by the ICANN board. Such an effort would distract from the work phase 2 which should be our focus.

Recommendation #12

The RySG team has concerns about the way the ICANN board has modified recommendation #12. We are opposed to the GNSO council accepting the ICANN board treatment as is.

We are supportive of providing the ICANN board with additional information/rationale for why we drafted the recommendation the way we did and asking the board to reconsider. We note the feedback provided by the RrSG and are supportive of their comments and the additional background they have provided.

We note that in the scorecard provided by the board (<https://www.icann.org/en/system/files/files/epdp-scorecard-15may19-en.pdf>) they request the ePDP further consider deletion. Given the intended phased implementation of recommendation #12 we are concerned about implementing the board modified recommendation #12 and then reconsidering it in phase 2 in parallel to or after implementation. This may result in re-work or create unintended consequences.