Motions 30 January 2018

Draft motion – Adoption of the charter for the ICANN Procedure For Handling WHOIS Conflicts with Privacy Law Implementation Advisory Group (WHOIS Procedure IAG) - DEFERRED to 22 February 2018 GNSO Council meeting.

Submitted by: Donna Austin
Seconded by: Heather Forrest

Whereas,

1. In November 2005, the Generic Names Supporting Organization (GNSO) concluded a policy development process (PDP) on WHOIS conflicts with privacy law, which recommended the creation of a procedure to address conflicts between a contracted party’s WHOIS obligations and local/national privacy laws or regulations.

2. The ICANN Board of Directors adopted the recommendations in May 2006 and the final procedure was made effective in January 2008.

3. As noted in the GNSO Operating Procedures, “Periodic assessment of PDP recommendations and policies is an important tool to guard against unexpected results or inefficient processes arising from GNSO policies”. As called for in Step 6 of the ICANN Procedure For Handling WHOIS Conflicts with Privacy Law, “ICANN will review the effectiveness of the process annually”.

4. Following a review of the procedure in May 2014 and the submission of the Final Report of the Implementation Advisory Group (IAG) in May 2016, the GNSO Council concluded that the proposed modification to the procedure with the alternative trigger as outlined in Appendix I of the IAG Final Report conforms to the intent of the original policy recommendations and confirmed its non-objection to the modification being implemented by Global Domains Division staff.

5. In conjunction, the GNSO Council requested that ICANN staff, based on their experience of administering the modification, assess the practicality and feasibility of this new trigger in comparison to the existing trigger as well as the other triggers discussed in the IAG Final Report, and report back accordingly to the GNSO Council.

6. Review of the WHOIS Procedure commenced on 3 May 2017 by publishing for public comment a paper outlining the new Alternative Trigger and soliciting public feedback on its implementation.

7. On 1 August 2017, Akram Atallah, President, ICANN Global Domains Division, wrote to the GNSO Council to provide an update on the comments received and outlining possible next steps for the GNSO Council to consider.

8. The GNSO Council reviewed the available materials, including the GDD’s possible next steps, and agreed to form a drafting team to develop a charter for a new implementation advisory group to review the public comments in order to assess whether modifications to the Revised ICANN Procedure for Handling WHOIS Conflicts with Privacy Law are necessary and to make recommendations to the GNSO Council accordingly.


10. The GNSO Council has reviewed and discussed the proposed charter.

Resolved,

1. The GNSO Council adopts the proposed charter for the ICANN Procedure For Handling WHOIS Conflicts with Privacy Law Implementation Advisory Group (WHOIS Procedure IAG).
2. The GNSO Council appoints Keith Drazek as the GNSO Council Liaison to the Implementation Advisory Group. Until such time the IAG has appointed a Chair, the GNSO Council Liaison will serve as the interim Chair.

3. The GNSO Council request staff to circulate the call for volunteers to the GNSO Stakeholder Holder Groups with the request for each Stakeholder Group to appoint up to 3 members to the IAG as soon as possible. Further, staff are requested to circulate through the normal communication channels a call to the wider ICANN community for volunteers for interested participants and observers to join the IAG.

4. The GNSO Council thanks the drafting team for its efforts.

Draft Motion – Adoption of Revised GNSO Operating Procedures and Proposed Modifications of the ICANN Bylaws consistent with the recommendations of the Bylaws Drafting Team.

Submitted by: Rafik Dammak
Seconded by: Darcy Southwell

WHEREAS:

1. On 30 June 2016, the GNSO Council approved the creation of a Drafting Team (DT) that was to work with ICANN staff to “fully identify all the new or additional rights and responsibilities that the GNSO has under the revised Bylaws, including but not limited to participation of the GNSO within the Empowered Community, and to develop new or modified structures and procedures (as necessary) to fully implement these new or additional rights and responsibilities”;

2. In creating the DT, the GNSO Council requested that the DT provide the GNSO Council with an implementation plan “which will have the consensus of the Drafting Team, including any recommendations for needed further changes to ICANN Bylaws and/or GNSO Operating Procedures to enable effective GNSO participation in ICANN activities under the revised ICANN Bylaws, not later than 30 September 2016”;


4. On 1 December 2016, the GNSO Council accepted the recommendations in the DT’s Final Report and directed ICANN Policy Staff to draft proposed language for any necessary modifications or additions to the GNSO Operating Procedures and, if applicable, those parts of the ICANN Bylaws pertaining to the GNSO. The GNSO Council also requested that ICANN Legal evaluate whether the proposed modifications were consistent with the post-transition Bylaws and report their findings to the GNSO Council;

5. Staff worked with the Bylaws DT to address any open issues, inconsistencies identified and confirm assumptions. As a result, the staff report on how each recommendation was addressed as well as proposed changes to GNSO Operating Procedures & ICANN Bylaws were published for public comment on 19 June 2017 (see https://www.icann.org/public-comments/gnso-op-procedures-2017-06-19-en);


7. The GNSO Council reviewed and discussed the proposed changes as well as comments received during subsequent meetings in September and October and during the GNSO Council Strategic Planning Session (29-31 January 2018).

8. As resolved previously, the GNSO Council intends to subject the adoption of the proposed modifications to existing procedures and/or ICANN Bylaws to a GNSO Supermajority vote.

RESOLVED:

1. The GNSO Council adopts the proposed modifications to the GNSO Operating Procedures (see https://gnso.icann.org/en/council/proposed-revisions-gnso-op-procedures-redline-19jun17-en.pdf), including the two minor updates as suggested by staff in the report of public comments in response to input received from the Registrar Stakeholder Group and Intellectual Property Constituency.

2. The GNSO Council instructs ICANN staff to post the new version of the GNSO Operating Procedures, effective immediately upon adoption.

3. The GNSO Council recommends that the ICANN Board of Directors adopt the proposed changes to section 11.3.i of the ICANN Bylaws to reflect new GNSO voting thresholds which are different from the current threshold of a simple majority vote of each House (see https://www.icann.org/en/system/files/files/proposed-revisions-bylaws-article-11-gnso-redline-18jun17-en.pdf). Until such time as the ICANN Board adopts the proposed changes to section 11.3.i of the ICANN Bylaws, the existing voting thresholds will remain applicable to any GNSO Council decision.