

8 September 2023

Tripti Sinha
Chair
ICANN Board of Directors

Cc: Sally Costerton, Interim President and CEO, ICANN

Subject: Timeline to Respond to Urgent Requests for Disclosure of Domain Name Registration Data (Proposed Registration Data Policy for gTLDs, EPDP Phase 1 Implementation)

Dear Tripti,

The Registrar Stakeholder Group (RrSG) notes the 23 August 2023 Governmental Advisory Committee (GAC) [letter](#) sent to the Board and offers the following to provide additional context and detail to the Board's considerations.

The RrSG extends our sincere thanks to the [gTLD Registration Data Policy Implementation Review Team](#) (IRT) members who participated and collaborated on these issues in good faith, clearly demonstrating an understanding and appreciation for varying perspectives and making a genuine attempt to reach a shared agreement for how to faithfully implement the Board-approved Policy Recommendations from the Expedited Policy Development Process (EPDP) on the Temporary Specification for gTLD Registration Data.

We also thank the ICANN Implementation Project Team (IPT) who supported the discussions, gathered input from all sides of the issue, and made every effort to reach agreement through this complex and contentious issue, especially in light of the EPDP Working Group (WG)'s Recommendation which left the specific Urgent disclosure request response timeframe to the IRT.

Policy Language

Thanks to considerable deliberation in the IRT, agreement was reached on the timeline to respond to Urgent registration data disclosure requests and the section was completed with final edits in September 2021, remaining unchanged from then through to the August 2022 public comment period.

The following is the text that was [published for public comment](#) in August 2022:

10.6. For Urgent Requests for Lawful Disclosure, Registrar and Registry Operator MUST acknowledge and respond without undue delay, but no more than two (2) business days from receipt. If responding to an Urgent Request for Lawful Disclosure is complex, or a

large number of requests are received by Registrar or Registry Operator, Registrar or Registry Operator MAY extend the time for response up to an additional one (1) business day from the date of receipt of the Urgent Request for Lawful Disclosure, provided Registrar or Registry Operator provides notice to the requestor within the initial two (2) business day period and explains the need for an extension of time.

With the closure of the public comment period in May 2023, and despite no new information or evidence being presented in the submitted comments, the Urgent request timeline was updated by the IPT without first consulting the full IRT.

After the IRT was notified of the update, several meetings (including [at ICANN77](#)) were conducted in an attempt to try and find a resolution. The IRT, including GAC members, dedicated the 24 July 2023 meeting to finding compromise, which was seemingly reached after intense discussion. At that point the IPT, with the apparent support of the entire IRT, updated the Policy incorporating the compromises reached in that meeting. RrSG and other IRT members were surprised to learn that the GAC later objected to, or did not realize, what the compromise had entailed.

This is the compromise language that was published following the 24 July 2023 meeting, which matches the RrSG understanding of the agreement reached:

10.6. For Urgent Requests for Lawful Disclosure, Registrar and Registry Operator MUST respond, as defined in Section 10.7, without undue delay, generally within 24 hours of receipt.

10.6.1. If Registrar or Registry Operator cannot respond to an Urgent Request for Lawful Disclosure within 24 hours, it MUST notify the requestor within 24 hours of receipt of an Urgent Request for Lawful Disclosure of the need for an extension to respond. Registrar or Registry Operator's extension notification to the requestor MUST include (a) confirmation that it has reviewed and considered the Urgent Request for Lawful Disclosure on its merits and determined additional time to respond is needed, (b) rationale for why additional time is needed, and (c) the time frame it will respond, as required by Section 10.7, which cannot exceed two (2) business days from the time of the initial receipt of the request.

10.6.2. In addition to the extension provided for in Section 10.6.1, if responding to an Urgent Request for Lawful Disclosure is complex, or a large number of requests are received by Registrar or Registry Operator, it MAY extend the time for response up to an additional one (1) business day provided it notifies the requestor within (2) business days from the time of the initial receipt of the request of the updated time frame to respond explaining the need for an additional extension of time.

It is important to note that the 10.6.1 obligation to notify the requestor within 24 hours is a new addition to the text and represents a **significant** compromise on behalf of registrars. This was accepted as registrars understand the importance of legitimate Urgent requests for disclosure.

Implementation Review Team Deliberations

The RrSG would like to reiterate that registrars are committed to responding to Urgent requests in the most swift and expeditious manner possible.

Registrars participated in the IRT in good faith, focusing on accurately implementing the EPDP WG Recommendations. We have engaged our business and operational teams and explored all the possibilities within our capabilities. We participated in sincere discussions and efforts to seek an acceptable outcome.

Asking the Board to review the issue at this point and ignore the compromises reached by the EPDP WG and the IRT is not supportive of completing and implementing policy development work. It calls into question the GAC's support for the multi-stakeholder policy development process as well as the GAC's willingness to meaningfully engage with other members of the Community in a manner that takes into account operational and legal realities.

At this stage, the gTLD Registration Data Policy should be published either in the form that was posted for public comment in August 2022 or with the updated Urgent response time agreed to in the 24 July 2023 meeting. This will demonstrate the effectiveness of the multistakeholder Policy Development Process in developing Consensus Policy, implementing policy Recommendations as intended, and successfully moving forward with the changes that have been in progress since 2018.

Duty to implement the Recommendations; response to public comments

The role of the IRT and IPT is not to make policy decisions, but is instead to faithfully implement the Working Group's Recommendations. In that context, there may be times when the final Policy language does not include everything one might hope for, but instead it represents the best and most reasonable compromise that could be achieved.

The GAC claims the July 24 compromise language "*calls the effectiveness of the public comment process into question and raises further questions about the interplay between the IRT and the IPT and whether all views, including those put forth by the GAC, have been adequately addressed.*"

This is deeply troubling; it disregards the discussions in meetings and on the mailing list over several years, in which the GAC has been an active participant throughout the duration of the process.

The public comments submitted regarding the Urgent request timeframe did not provide any new information or discussion that had not already been thoroughly vetted in the PDP process over the last several years. As noted in the GAC letter, the IPT considered all public comments and, specifically on the issue of the timeline to respond to Urgent requests, came back to the IRT with a new proposal. When that new proposal did not have support from all members of the IRT, the IPT went out of their way to understand all of the positions of IRT members, and gave every opportunity for the IRT to reach consensus agreement. When a consensus agreement could not be achieved, the IPT settled on a compromise proposal that took into account the various positions to the greatest extent possible.

While this was not the ideal outcome for any one group, it was the best that could be achieved given the divergent positions. Not directly and completely implementing all public comment input does not mean the input was not considered or that the process is ineffective; rather, it means that the broader group determined a different course was appropriate.

The RrSG considers the August 2022 public comment version of the Registration Data Policy to be the most accurate reflection of the Recommendation, but is willing to accept the compromise language developed during the 24 July 2023 IRT meeting.

Next Steps

This issue must be resolved not only for this IRT but to confirm the standard: *that PDP WG Recommendations must be implemented as written, and cannot be substantively changed by the IRT or IPT*. Overturning the compromises reached in the IRT in favor of the last-minute change proposed by the GAC will represent a significant departure from the multi-stakeholder model of policy development.

The best outcome at this stage is to publish the Registration Data Policy with a response time for Urgent disclosure requests that properly matches the Recommendation text, and which respects the years of effort put forth by all members of the IRT.

Thank you,



Ashley Heineman
Chair, Registrar Stakeholder Group