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Governmental Advisory Committee

23 August 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 GAC writes to express its public policy concerns over the proposed implementation of the Registration Data Policy for gTLDs¹ regarding the appropriate timeline to respond to requests for registration data in select emergency circumstances, known as “urgent requests”.

Simply put, the proposed outcome of up to three business (not calendar) days to respond to the narrowly defined category of “urgent” requests for domain name registration data does not serve its intended purpose.

The proposed implementation² diverges from ICANN Org’s earlier conclusion in response to public comments (identifying a quicker timeline) and risks conveying the impression that the current implementation will not sufficiently prioritize responding to urgent requests for information involving imminent threats to life and critical infrastructure.

Accordingly, the GAC asks the Board to carefully review the proposed implementation of this particular issue and consider next steps that would achieve an outcome that better meets the public safety considerations posed by urgent requests. For clarity, our concern focuses on the urgent request issues, and we do not wish for our request to delay the implementation of the balance of the GNSO policy recommendations.

¹ See status sheet [Registration Data Policy for All gTLDs \(EPDP Phase 1 Implementation\)](https://www.icann.org/policy/implementation) at <https://www.icann.org/policy/implementation>

² [Final Proposed Registration Data Policy](#) (24 July 2023)

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GNSO EPDP Phase 1 Policy Recommendations

For context, the 2019 Phase 1 policy recommendations with regard to *Reasonable Requests for Lawful Disclosure of Nonpublic Registration Data*³ stated that:

A separate timeline of [less than X business days] will [be] considered for the response to ‘Urgent’ Reasonable Disclosure Requests, those Requests for which evidence is supplied to show an immediate need for disclosure [time frame to be finalized and criteria set for Urgent requests during implementation].

IRT Defines “Urgent Requests” and Timeline

The Implementation Review Team (IRT) developed narrow criteria for urgent requests:

*“Urgent Requests for Lawful Disclosure” are limited to **circumstances that pose an imminent threat to life, serious bodily injury, critical infrastructure, or child exploitation** in cases where disclosure of the data is necessary in combatting or addressing this threat. Critical infrastructure means the physical and cybersystems that are vital in that their incapacity or destruction would have a debilitating impact on economic security or public safety.*⁴ [Emphasis added]

However, the IRT proposed an up to three-business day timeline to respond to such emergency requests requiring a response *“without undue delay, but no more than two (2) business days from receipt”* . . . and *“up to an additional one (1) business day”* under certain circumstances.⁵

GAC Public Comment

In public comments on the Draft Registration Data Consensus Policy, GAC and other stakeholder groups objected to the IRT’s proposed timeline to respond to “urgent” requests as not consistent with the obligation to respond to emergency situations:

³ [EPDP Phase 1 Final Report](#) (20 February 2019), Recommendation 18, pp. 18-19

⁴ [Draft Registration Data Consensus Policy for Public Comment](#) (22 August 2022), Definition, Section 3.8, p. 3

⁵ *Ibid.*, Section 10.6, p. 13

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... despite the immediate need for such information, the implementation team construed the Phase 1 recommendations to permit a two business-day response period followed by one business-day extension under certain circumstances. **Put simply, three business days (which could stretch to seven calendar days depending on weekends and intervening holidays) is not a reasonable time period for responding to urgent requests. This is especially true because “urgent” requests apply only to emergency situations involving imminent threats to life and critical infrastructure among other things.**⁶ [Emphasis added]

Therefore, the GAC recommended that the IRT revisit the timeline “to ensure that responses to urgent requests are in fact expedited in a manner consistent with an emergency response.” Communications within the IRT on this topic also observed that if something is urgent, then it needs to be dealt with immediately and that the request should be processed and responded to in a timeline not measured in days.

While we recognize the Registrar’s obligation to ensure that they properly respond to reasonable requests for lawful disclosure and the potential liability risks, we highlight the need for Registrars to have systems in place to respond rapidly to emergency requests.

ICANN Org Concludes 24-hour Timeline More Appropriate

The ICANN org Implementation Project Team (IPT) carefully reviewed the public input received and concluded that there was “sufficient justification to revisit the policy language and to require a 24-hour response time for urgent requests.”⁷

The IPT based its conclusion on:

- the large amount of input concerning the definition of urgent requests and asserting that the draft Registration Data Policy failed to implement expedited timeframes consistent with the urgency required to respond to urgent requests;
- its belief that
 - the 24-hour response time accurately reflects the intent of the EPDP policy recommendations, particularly in cases where urgent requests rise to the level of emergencies and are made to prevent harm to individuals or critical

⁶ [GAC Public Comments on the Draft Registration Data Consensus Policy for gTLDs](#) (21 November 2022), pp. 6-7

⁷ p. 5 of ICANN org Review of Public Comments (28 April 2023), as appended to the [Public Comment Summary Report](#) (20 January 2023) after p.39

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infrastructure, such as those related to threat to life, human life and child exploitation and

- the 24-hour time period allows urgent requests to be addressed sooner to prevent harm through identifying the perpetrator for the disruptive action or the victim for notification or both;
- the narrow definition of what constitutes an "urgent request", which only applies to circumstances that pose an imminent threat to life, of serious bodily injury, to critical infrastructure, or of child exploitation and hence presents:
 - a high threshold and
 - minimizes the likelihood of Registry Operators/Registrars receiving requests that meet the standard of urgent frequently or in a high volume.⁸

The IPT also removed the term "business days" from the response time requirement, noting that the term is subject to different interpretations in different regions, and is not required by the EPDP Phase 1 team recommendations.⁹

Finally, the IPT observed that the 24-hour response time aligns with Section 3.18.2 of the 2013 RAA which already requires Registrars to have a Law Enforcement Agency (LEA) abuse contact that must review reports of abuse involving illegal activity within 24 hours, *"thus Registrars could leverage that type of contact which is already in place."*¹⁰

While we note that the IPT did not identify the different standards to be applied when considering requests for registration data, the existing requirement could serve as a model for Registrars to develop appropriate systems for rapid responses when necessary.

IRT Rejects ICANN IPT Conclusion and Returns to up to 3-Business Day Period to Respond to Urgent Requests

Regrettably, the IRT did not agree with the IPT's position. The [current proposed implementation](#), intended for publication by the end of August, returns to a three-business day limit:

⁸ Ibid., pp. 5-6

⁹ Ibid., p. 6

¹⁰ Ibid., p. 6

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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.

In the view of the GAC, through constructive engagement, the current version contains certain improvements such as an explicit reference to the general expectation of a response within 24 hours and the requirement to notify the requestor if additional time is needed.

Nevertheless, the possibility for not one, but two extensions, totaling up the three business days presents the same public policy concerns as the original version, namely a timeline that does not meet the intended purpose of providing a reasonable window to respond to emergency or urgent requests. Moreover, the use of business days injects uncertainty into the process because of the diversity of global holidays and work weeks, thus risking timelines that extend significantly beyond three calendar days.

We observe the tension between the proposed implementation and the concerns conveyed by the GAC during the public comment process. In this regard, we note ICANN's commitment to "seeking input from the public, for whose benefit ICANN in all events shall act."¹¹

¹¹ [ICANN Bylaws](#), Section 1.2(a)(iv) Commitments

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This outcome 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.

The GAC believes that section 10.6 is not ready for publication and should be considered further. In light of the significant achievement by the community, the balance of the implementation of the Consensus Policy should move forward.

There are a number of options that could respond to public safety concerns in addressing Urgent Requests in the rare “*circumstances that pose an imminent threat to life, serious bodily injury, critical infrastructure, or child exploitation.*” These options include adopting ICANN org’s proposal in its analysis of input received during the public comment proceeding¹², or a Board-convened discussion with the IRT.

For these reasons, the GAC seeks your review of this important matter prior to the publication of the Registration Data Consensus Policy for gTLDs implementation proposal at the end of August.

Sincerely,



Nicolas G. Caballero
Chair, Governmental Advisory Committee (GAC)
Internet Corporation for Assigned Names and Numbers (ICANN)

¹² p. 5 of ICANN org Review of Public Comments (28 April 2023), as appended to the [Public Comment Summary Report](#) (20 January 2023) after p.39