

11 December 2018

Brian Winterfeldt  
President  
ICANN Intellectual Property Constituency  
Via email [brian@winterfeldt.law](mailto:brian@winterfeldt.law)

**RE: Privacy and Proxy Service Provider Accreditation Policy Implementation**

Dear Brian and IPC Leadership,

Thank you for your [12 November 2018 letter](#), in which you encouraged ICANN org to complete the implementation of the Privacy and Proxy Service Provider Accreditation Program (PP Accreditation Program) on an expedited basis. ICANN org would welcome the opportunity to discuss more specifics about this project's status and will schedule a meeting of the full Privacy and Proxy Service Provider Accreditation Program Implementation Review Team (PP IRT) to discuss this topic.

ICANN org appreciates the significant resources and leadership that the IRT, including the IPC members, have contributed toward this project from its inception to the current implementation phase. I understand that the IPC views ICANN org's recent determination regarding this project's status as unexpected, given the previous intent to proceed to public comment in the near future. ICANN org has heard your and other stakeholders' recent feedback on this topic. After considering this feedback, ICANN org believes that the most prudent use of organization and community resources at this stage is to focus on the work of the Expedited Policy Development Process on the Temporary Specification for gTLD Registration Data (EPDP) and continued discussions with the European Data Protection Board before proceeding with implementation of the PP Accreditation Program.

As noted in discussions at ICANN63, there is currently a significant amount of uncertainty around interpreting the data processing requirements of GDPR related to this type of proposed accreditation agreement. ICANN org more fully elaborated on these areas of uncertainty, and areas where the PP IRT could benefit from the work of the EPDP and continued discussions with the European Data Protection Board, in its [2 November message](#) to the PP IRT.

I understand that you disagree that the work of the EPDP is relevant to the privacy and proxy service provider accreditation program. Nonetheless, ICANN org believes that the work of the EPDP will address topics that are central to privacy/proxy accreditation program requirements, including:

- The purposes of processing gTLD registration data and lawful bases for processing of that data, such as:
  - Collection;
  - Retention; and
  - Transfer of data to third parties, including data escrow agents and third-party requestors; and
- Allocation of controller/processor obligations for gTLD registration data.

More fundamentally, it is also possible that a solution for third-party access to non-public registration data might be directly or indirectly applicable to PP customer data, which would impact implementation of the PP accreditation program and possibly even the need-as determined by the community-for the PP accreditation program.

Until we gain enough clarity to address these issues, we do not believe it's prudent to proceed to public comment on proposed accreditation program requirements. We note ICANN org's and the community's support of the EPDP Team's work, and that the EPDP's Initial Report [was recently posted for public comment](#). ICANN org continues to monitor the EPDP Team's work for potential applications in the privacy/proxy context. We are always open to your feedback and to discuss your rationale for recommending that ICANN org proceed to implementation of this accreditation program on a more expedited basis.

Best regards,



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