**Expedited Policy Development Process Initiation Request – General Counsel Statement (Section E)**

**Draft: 20 June 2018**

In determining whether the issue is within the scope of the ICANN policy process and the scope of the GNSO, ICANN org staff, and the General Counsel’s office have considered the following factors:

**Whether the issue is within the scope of ICANN’s mission statement.**

As provided in Section 1.1 of ICANN’s Bylaws, ICANN’s mission is:

*… to ensure the stable and secure operation of the Internet’s unique identifier systems […] Specifically, ICANN [c]oordinates allocation and assignment of names in the root zone of the Domain Name System ("DNS") and coordinates the development and implementation of policies concerning the registration of second-level domain names in generic top-level domains ("gTLDs").*

Within the scope of ICANN’s mission, ICANN’s role is “to coordinate the development and implementation of policies [f]or which uniform or coordinated resolution is reasonably necessary to facilitate the openness, interoperability, resilience, security and/or stability of the DNS including, with respect to gTLD registrars and registries, policies in the areas described in Annex G-1 and Annex G-2.” The areas described in Annex G-1 and Annex G-2 include, for example, “maintenance of and access to accurate and up-to-date information concerning domain name registrations.”

As outlined in Section 1 of the Advisory Statement to the Temporary Specification for gTLD Registration Data, new data protection laws in Europe impose obligations that would make it impossible for ICANN, registry operators, and registrars to continue to comply with certain ICANN policies and contractual arrangements about how gTLD registration data is processed in the DNS. Without a coordinated approach to addressing these changes, each registry operator and registrar might make their own determination regarding what gTLD registration data should be collected, transferred and published, leading to a fragmentation of the globally distributed WHOIS system and the handling of gTLD registration data. Fragmentation of the WHOIS system would jeopardize the availability of registration data, which is essential to ensuring the security and stability of the Internet, including to mitigate attacks that threaten the stable and secure operation of the Internet.

The Temporary Specification for gTLD Registration Data adopted by the ICANN Board on 17 May 2018 establishes *temporary* requirements to address these issues. Initiating a policy development process to consider the issues would be in furtherance of ICANN’s mission as a new policy would help ensure that there is uniform or coordinated approach to processing gTLD registration data in order to facilitate interoperability, security and/or stability of the Internet or the DNS.

As the policy development body responsible for developing and recommending to the Board substantive policies relating to generic top-level domains, consideration of the issues addressed by the Temporary Specification in a policy development process is within the role of the GNSO.

**Whether the issue is broadly applicable to multiple situations or organizations.**

As gTLD registration data affects all gTLD registrants, registrars and registries, the issue is broadly applicable to multiple situations or organizations. Any changes to the Temporary Specification, its rules or technical requirements that may result from a PDP would also be broadly applicable to multiple situations or organizations.

**Whether the issue is likely to have lasting value or applicability, albeit with the need for occasional updates.**

The policy development process may produce a new policy framework concerning registration data directory services to better serve the needs of the global Internet community while taking into account relevant data protection laws. In this regard, the issues to be addressed by the PDP are likely to have lasting value or applicability in the domain name ecosystem.

**Whether the issue will establish a guide or framework for future decision-making.**

Revisions to existing policies and obligations concerning the processing of gTLD registration data are expected to function as a sustainable policy framework for future decision-making in relation to this issue.

**Whether the issue implicates or affects an existing ICANN policy.**

The goal of the PDP would be to consider the matters addressed in the Temporary Specification concerning the processing of gTLD registration data. There are various ICANN policies that are impacted by the changes in the Temporary Specification, including the Transfer Policy and the Uniform Domain Name Dispute Resolution Policy. It is anticipated that work on the new PDP may impact other policies, as well as future registry and registrar agreements for gTLDs in so far as they deal with the collection, maintenance and access to gTLD registration data.