**Draft motion – Confirmation that modification to the procedure that implements the Whois conflicts with privacy law policy recommendation with the Contracted Party Request and Legal Opinion triggers is consistent with the intent of the policy recommendation**

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](https://www.icann.org/resources/pages/whois-privacy-conflicts-procedure-2008-01-17-en), “ICANN will review the effectiveness of the process annually”.
4. Following a 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](http://gnso.icann.org/en/drafts/iag-review-whois-conflicts-procedure-appendix-1-23may16-en.pdf) 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 reports back accordingly to the GNSO Council.
6. ICANN organization kicked off the requested review of the Whois Procedure by [publishing for public comment](https://www.icann.org/public-comments/whois-privacy-law-2017-05-03-en) a paper outlining the new Alternative Trigger and soliciting public feedback on its implementation on 3 May 2017.
7. On 1 August 2017, Akram Atallah, President, Global Domains Division at ICANN [wrote](https://gnso.icann.org/en/correspondence/atallah-to-bladel-et-al-01aug17-en.pdf) to the GNSO Council to provide the GNSO Council with an update on the comments received and outlined possible next steps for the GNSO Council to consider.
8. One of the possible next steps in the letter suggested that “the GNSO Council may consider incorporating a Contracted Party Request and/or Legal Opinion triggers, as previously discussed by the Implementation Advisory Group (IAG). However, the Council would need to first assess whether these triggers are consistent or not with the underlying policy recommendations noting that these two additional triggers previously did not obtain consensus support from the IAG, which recommended adoption of the Alternative Trigger”. The Council also observed that the staff public comment report concluded that “Almost all commenters expressed concern regarding the practicality and feasibility of getting the necessary documentation from the relevant government agency as part of the “Alternative Trigger” in step one of the revised Whois Procedure, in the absence of a Whois Proceeding”.
9. The GNSO Council emphasizes that the trigger is only step 1 of the procedure which is followed by additional steps such as consultation and General Counsel analysis and recommendation before a resolution is considered by the ICANN Board.
10. The GNSO Council reviewed all the related materials and received and discussed the possible next steps.

Resolved,

1. The GNSO Council has reviewed the Contracted Party Request and Legal Opinion as outlined in Appendix 2 and 3 of the [IAG Final Report](http://gnso.icann.org/en/drafts/iag-review-whois-conflicts-procedure-23may16-en.pdf) and concludes that the proposed modifications to the procedure conform to the intent of the original policy recommendations and as such the GNSO Council confirms its non-objection to the modification being implemented by Global Domains Division Staff as outlined in Appendix 2 and 3 (<http://gnso.icann.org/en/drafts/iag-review-whois-conflicts-procedure-appendix-1-23may16-en.pdf>) as soon as practically feasible.
2. The GNSO Council recommends that as soon as the modification has been implemented all affected parties are informed accordingly.
3. The GNSO Council requests that ICANN staff outlines it proposed approach and timeline to review the effectiveness of the procedure annually going forward as foreseen called for in Step 6 of the [ICANN Procedure For Handling WHOIS Conflicts with Privacy Law](https://www.icann.org/resources/pages/whois-privacy-conflicts-procedure-2008-01-17-en).