

Expedited Policy Development Process on the Temporary Specification for gTLD Registration Data

EPDP Legal Committee Framework



13 December 2018

Agenda

1

EPDP-LC
Framework

2

The Rationale

3

The Composition

4

The Process

5

The Guidelines

6

The Budget

The Legal Committee Framework

- ⊙ Establish a formal sub-team, EPDP Legal Committee (LC), that will act as intermediaries between the larger EPDP and internal/external legal counsel to review specific requests and assign the appropriate resource as necessary to satisfy the request.
- ⊙ What they will do:
 - Filter, analyze, refine (ensure clarity), and approve requests for legal advice
 - Coordinate questions with ICANN Org's legal counsel and vendors
 - Determine which legal counsel is best suited to respond
 - Provide the EPDP with legal advice as processed by the LC
- ⊙ Composition:
 - LC Chair: TBD
 - Leadership: Kurt, Rafik
 - Practicing lawyers within EPDP (Primary or Alternate)
 - Staff: Caitlin, Dan
 - Policy Staff Support (on mail list, provide backup, call mgmt, or PCST): Marika, Terri, Andrea, Nathalie, Berry, David Olive

The Rationale

- ⦿ The EPDP has discussed several times the distinction between policy questions vs legal questions
- ⦿ Deployment of a framework that's been proven to be effective, as used in the CCWG-Workstream 2
- ⦿ Prioritize questions that are critical for the delivery of the Final Report
- ⦿ Maintains scope precision to work within the remaining budget allocated by the ICANN Board
- ⦿ Provides a regimented process of review to determine best resources to fulfill requests
- ⦿ Provides access to outside legal counsel resources as required

The Process

Initiation

- Questions requiring legal advice are developed within the EPDP, agreed upon, and passed to the Legal Committee (LC) for review

Evaluation & Processing

- LC ensures that request is a legal issue (not a policy one), based on general guidelines
- Determines best internal/external resource to process request
- Ensures request can be fulfilled within the budget
- Provides status of request

Closure

- Sends response back to EPDP and manages reaction
- Counsel participation to EPDP calls is exceptional only

LC Management

- ◉ The committee meets at least twice per month (weekly calls as necessary to initiate); EPDP requests documented and shared before the meeting
 - ◉ Requestors may attend relevant part of the call to discuss their requests
 - ◉ ICANN Org and/or external legal counsel may attend as necessary to ensure clarity of expectations and context
- ◉ EPDP-PCST will track legal expenses for the LC

The Guidelines

- ⦿ Each request should precisely frame the issue, document the concern, and contain targeted questions
- ⦿ The Committee may direct the request at ICANN Org legal or external firms, based on a case-by-case assessment
- ⦿ Each request received will first explore if advice has already been given from the EDPB or other input ICANN Org has received (e.g., Hamilton memos)
 - If ICANN Org counsel already has an answer available to the question, it can be shared immediately to avoid extra costs.
 - If the request cannot be addressed by prior advice, LC to determine if it can be satisfied via ICANN Org legal resources (General Counsel / Existing vendors)
 - If the request cannot be addressed via internal resources, the request should document appropriate rationale why internal resources were not available to meet the requirement

The Guidelines – cont.

- ⦿ Decisions will take into account costs, delays, respective skills, as well as potential requirements for “independent” advice.
- ⦿ The Committee is encouraged to use ICANN Legal as much as possible in order to manage costs effectively.
- ⦿ Hiring of other firms for specific expertise will be subject to the ICANN Org’s procurement processes prior to approval.
- ⦿ Once the LC has determined it needs to hire external legal counsel, it documents the request with relevant details, including estimated costs and financial impact for approval to the budget owner.
- ⦿ The EPDP-PCST will liaise with the LC and provide formal responses as they become available and documented on the Wiki if approved.

The Budget

- ⦿ Aug 2018 – ICANN Board approves funding to EPDP for \$590K
 - Cherine’s letter states, “this budget does not include the use of external legal counsel/advice. However, if deemed necessary and only if adequate support cannot be provided through existing ICANN resources and available Data Protection Authority guidance, the EPDP team could make use of external legal counsel/advice as long as the overall budget is not exceeded. In other words, trade-offs would have to be made to make room within the budget for the use of external legal counsel/advice, which would be contracted by ICANN org”
- ⦿ Staff has identified that some resources, for example those earmarked for limited use of external experts (50,000 USD), could be reallocated to this purpose, if this is a priority for the EPDP Team
 - any commitment above \$50K results in 90%+ of the original \$590K as committed/spent
- ⦿ Statements of Work will be managed via ICANN Org’s procurement process

Q & A

Engage with ICANN – Thank You and Questions



One World, One Internet

Visit us at **icann.org**



@icann



facebook.com/icannorg



youtube.com/icannnews



flickr.com/icann



linkedin/company/icann



slideshare/icannpresentations



soundcloud/icann