

Dear ICANN Board,

CC: EPDP Team,

On behalf of the GNSO Council, we would first like to thank you for the constructive engagement and input we've received to date in relation to the consultation process following the non-adoption by the ICANN Board of parts of two of the EPDP Phase 1 recommendations.

With this letter, we would like to provide an update on the current Council thinking and provide you an opportunity to comment if this does not align with your understanding or interpretation of the discussions to date as well as the status of our consultation in the context of Annex A-1, Section 6 of the ICANN Bylaws, prior to the GNSO Council 'affirming or modifying its recommendation':

- 1) In relation to recommendation #1, purpose 2, everyone appears to agree that this is firmly within the scope of the EPDP Team to address as part of its phase 2 deliberations as the original language was already flagged as a placeholder pending further consideration during phase 2. As such, the Council does not expect it will need to take further action in the context of Annex A-1 Section 6 of the ICANN Bylaws, but it will consult with the EPDP Team to ensure it carefully considers the Board's rationale for the non-adoption of purpose 2 as part of its deliberations and subsequent work on this purpose.
- 2) In relation to recommendation #12, the Council received the rationale provided by members of the EPDP Team for why deletion was originally recommended. This was initially shared with the ICANN Board during the joint Board-GNSO Council meeting at ICANN65 and is also included below. During that discussion, it appeared that this rationale might not have been sufficiently explained in the EPDP Team Phase 1 Final Report and, as such, the Board's consideration of this aspect of recommendation #12 required further detail.

The Council would like to confirm with the ICANN Board whether this is indeed correct and whether the rationale has changed its thinking with regards to the deletion part of recommendation #12. Some Council members are of the view that as deletion is part of a consensus recommendation of the EPDP Team, for which supporting rationale has now been provided (see below), it would not be appropriate for the Council to change this part of the recommendation at this time without a compelling and convincing reason to do so. Other Council members agree with the Board's rationale for why this part should not be adopted. Thus, based on the Board's feedback, the Council is expected to consider further its response to the non-adoption.

- 3) The GNSO Council will consider any further input that is received from either the ICANN Board and/or the EPDP Team before finalizing its conclusions in the form of a 'Supplemental Recommendation' as outlined in Annex A-1, section 6 of the ICANN

Bylaws. The GNSO Council intends to do so either during its meeting in September or October 2019.

In order to finalize this consultation process in a timely manner, we request any feedback you may have no later than 06 September 2019.

Sincerely,

Keith Drazek, Rafik Dammak, Pam Little  
GNSO Council Leadership Team

### **Recommendation #12 Rationale**

- a. Rec 12 is a compromise between those who believe that the Registrant Org is not personal data, and those who believe it could possibly be personal data, or used to infer/obtain personal data via other sources.
- b. Registrants and Registrars have been using Registrant Org in non-standard ways for almost 20 years. There is a significant legacy of mixed uses and purposes for this field. There is no standardization across the registrar landscape in how this field is utilized.
- c. No matter what the outcome, the EPDP will effectively “change the rules” for Registrants who may have entered data years ago without regard for the privacy implications.
- d. Registrants should be provided with a path to confirm if the data entered in Registrant Org indicates that their domain name is actually registered by a legal (vs. natural) person. As this will result in the legal person’s Org data being published, this needs to be an explicit confirmation, similar to opt-in consent.
- e. If a Registrant explicitly deletes the data in Registrant Org, then Registrars should make this change in their own databases, and at the Registry.
- f. But if the Registrant doesn’t respond to attempts by the registrar to confirm the type of data subject they are, then that must be taken as an “opt-out” of the new rules supporting this field. (Privacy by Default)
- g. Registrars have no method at this time to relay a consent status to the registry. Deletion of data is a workaround which allows the natural person’s Org field to remain private, but which may cause databases to get out of sync, thus negatively impacting the accuracy of registration data.
- h. If deletion was later found to be an error on the part of the Registrant, it is a trivial matter for them to re-enter the data.
- i. But if their personal data is exposed in error, then it cannot be un-exposed, and the Registrar/Registry involved could be subject to GDPR enforcement.

- j. Exposing the data by accident is an issue, but contracted parties also need to know our liability and responsibility under Art 17.2 of the GDPR.
- k. Where the controller has made the personal data public and is obliged pursuant to paragraph 1 to erase the personal data, the controller, taking account of available technology and the cost of implementation, shall take reasonable steps, including technical measures, to inform controllers which are processing the personal data that the data subject has requested the erasure by such controllers of any links to, or copy or replication of, those personal data.