BUSINESS CONSTITUENCY AND INTELLECTUAL PROPERTY CONSTITUENCY
CONSENSUS STATEMENT ON EPDP PHASE 1 FINAL REPORT

The BC and IPC are staunch supporters of the ICANN bottom-up, consensus-driven multistakeholder model, as shown by BC and IPC's good faith participation in this EPDP. Throughout this process both constituencies sought a *full consensus* result. The BC and IPC seek a robust multistakeholder process to drive full consensus that serves the public interest and protects consumers. All voices should be given due consideration, and initial disagreement should drive collaboration leading to true consensus. Purported consensus--where there actually is not consensus--would undermine ICANN's bottom-up, consensus-driven multistakeholder model. That is an outcome the BC and IPC hope to avoid.

Accordingly, while we welcome progress made by the EPDP team and are thankful for the efforts of our colleagues and ICANN Org, we cannot support certain parts of the Final Report as set forth below. Our hope is that by clarifying our position, consistent with numerous BC and IPC statements on WHOIS, GDPR, and the Interim Report, the EPDP team will redouble its effort to achieve full consensus. We remain committed to working with the community and the EPDP team to develop policy that meets the needs of the full community and honors ICANN's commitment to ensure GDPR compliance while maintaining the existing WHOIS system to the greatest extent possible.

We look forward to constructive engagement on these remaining issues.

To support the EPDP Phase 1 Final Report, the IPC and BC require the following five amendments:

Recommendation #1: Purpose 2
Purpose 2 of Recommendation 1 is insufficient for GDPR, and is inadequate to support Phase 2 work on Standardized Access (UAM). Specifically, Purpose 2 of Recommendation 1 must be revised as follows:

> *"Contributing to the maintenance of the security, stability, and resiliency of the Domain Name System in accordance with ICANN's mission through enabling lawful responses to reasonable disclosure requests related to* ~~lawful data disclosure requests.[3]~~ *consumer protection, cybersecurity, intellectual property, or law enforcement."*

Recommendation #18: Requests for Lawful Disclosure
Recommendation #18 must be updated as follows:

> Second, delivery of a properly-formed Reasonable Request for Lawful Disclosure to a Registrar or Registry Operator does NOT require automatic disclosure of information, but requires a Registrar or Registry Operator to reasonably consider the request.
>
> Timeline & Criteria for Registrar and Registry Operator Responses:
>
> - Response time for acknowledging receipt of a Reasonable Request for Lawful Disclosure. Without undue delay, but not more than two (2) business days from receipt, unless shown circumstances does not make this possible.
> - Requirements for what information responses should include. Responses where disclosure of data (in whole or in part) has been denied should include: rationale

sufficient for the requestor to understand the reasons for the decision, including, for example, an analysis and explanation of how the balancing test was applied (if applicable).

- Logs of Requests, Acknowledgements and Responses should be maintained in accordance with standard business recordation practices so that they are available to be produced as needed including, but not limited to, for audit purposes by ICANN Compliance;
- Response time for a response to the requestor will occur without undue delay and where 95% of responses occur within 15 days.~~and in any event within [X business] days of receipt of the request. (A finalized time frame to be set during implementation.)~~
- A substantially shorter timeline ~~A separate timeline of [less than X business days]~~ will be considered for the response to 'Urgent' Reasonable Disclosure Requests, those Requests for which evidence is supplied to show an immediate need for disclosure [time frame to be finalized and criteria set for Urgent requests during implementation].

The suggested response time service level for disclosure requests (95% within 15 days) could be revisited if disclosure request volumes are excessive.

The EPDP Team recommends that the above be implemented and further work on defining these criteria commences as needed and as soon as possible.

Recommendation #14 - Privacy/Proxy Registrations - Must be Updated and Clarified

This Recommendation must take into account the eventual implementation of the Privacy/Proxy Services Accreditation Consensus Policy, allowing for the support for accredited services in addition to affiliated services. The current Recommendation #14 language must be amended as follows:

In the case of a domain name registration where an "affiliated or accredited"* privacy/proxy service used (e.g. where data associated with a natural person is masked), Registrar (and Registry where applicable) MUST include in the public RDDS and return in response to any query full non-personal RDDS data of the privacy/proxy service, which MAY also include the existing privacy/proxy pseudonymized email.

In addition, the implementation of the Privacy/Proxy Services Accreditation Consensus Policy must be completed within 90 days after the adoption of the EPDP policy recommendations by the Board.

Recommendation #12 - Organization Field Implementation

With respect to Organizational field data, Recommendation #12 must be updated as follows -

Implementation advice: the implementation review team should consider the following implementation model discussed by the EPDP Team:

For existing registrations, the first step will be to confirm the correctness / accuracy of the existing Organization field data.

For the period between the adoption of EPDP policy recommendations ~~and some future "date certain" to be determined by the implementation review:~~*and one hundred and five (105) days thereafter, consisting of forty-five (45) days for implementation procedural set-up to be devised and agreed to and sixty (60) days for implementation:*

Recommendations #16 and #17: Scope of application for Geographic Distinction and Natural vs. Legal

Update to Recommendation #16:
1) The EPDP Team recommends that Registrars and Registry Operators are permitted to differentiate between registrants on a geographic basis, but are not obligated to do so.

2) The EPDP Team recommends that as soon as possible ICANN Org undertakes a study with respect to geographic distinctions, similar to the study already contemplated in Rec 17 below.

3) The EPDP Team will determine and resolve the issue of geographic distinction in Phase 2.

Update to Item 3 of Recommendation #17:
1) The EPDP Team recommends that the policy recommendations in this Final Report apply to all gTLD registrations, without requiring Registrars or registries to differentiate between registrations of legal and natural persons, although registrars and registries are permitted to make this distinction.
2) The EPDP Team recommends that as soon as possible ICANN Org undertakes a study, for which the terms of reference are developed in consultation with the community, that considers:
   ● The feasibility and costs including both implementation and potential liability costs of differentiating between legal and natural persons;
   ● Examples of industries or other organizations that have successfully differentiated between legal and natural persons;
   ● Privacy risks to registered name holders of differentiating between legal and natural persons; and
   ● Other potential risks (if any) to registrars and registries of not differentiating.
3) The EPDP Team will ~~discuss~~ determine and resolve the Legal vs. Natural issue in Phase 2. ~~Depending on the timing of the research, its discussions may inform the scope of research and/or use its findings.~~

Additional Concerns:

We agree with concerns expressed by ALAC regarding Thick Whois. A middle ground may be to have currently-thick TLDs remain thick, and permit currently-thin gTLDs to stay thin.

There are no assurances of verification for data accuracy in non-redacted WHOIS fields, nor any requirement to respect a registrant's consent to publish his or her contact information.