Dear ICANN Board, 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, prior to the GNSO Council finalizing its position:

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, apart from reminding the EPDP Team to carefully consider the Board’s rationale for the non-adoption of purpose 2 as part of its deliberations.
2. In relation to recommendation #12, the Council welcomed the rationale that was provided by members of the EPDP Team for why deletion was originally recommended which was shared with the ICANN Board during the joint Board-GNSO Council meeting at ICANN65 (see also 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 not factored in as part of the Board’s consideration of this aspect of recommendation #12. As a result, the Council is planning to resubmit this recommendation in its original form with the rationale provided (see below) as it concerns a recommendation that achieved full consensus / consensus support in the EPDP Team’s Phase 1 Final Report.

1. 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 August or September 2019.

In order to finalize this consultation process in a timely manner, we request any feedback you may have no later than 19 August 2019.

Sincerely,

Keith Drazek, Rafik Dammak, Pam Little

GNSO Council Leadership Team

**Recommendation #12 Rationale**

1. 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.
2. 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.
3. 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.
4. 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.
5. If a Registrant explicitly deletes the data in Registrant Org, then Registrars should make this change in their own databases, and at the Registry.
6. 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)
7. 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.
8. 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.
9. 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.
10. 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.
11. 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.