

RySG Council Statement

I am making this statement on behalf of the RySG and our GNSO councillors.

The RySG would like to thank all the ICANN community members who participated in the EPDP phase 2 for their countless volunteer hours, the ICANN staff members without whom the final report wouldn't have been possible and especially Janis Karklins for chairing the working group. Producing a final report on an issue this complex under accelerated timelines is truly a testament to the ICANN community and the multi-stakeholder model.

For decades the ICANN community has struggled with a protracted debate over Whois. The adoption of the General Data Protection Regulation (GDPR) forced us to re-evaluate existing policy and practice related to Whois and finally recognize, as a community, that privacy is, and always has been, a right of domain name registrants as data subjects. Data protection law prohibits the indiscriminate publication of a registrant's personal data. Unfettered access to personal data facilitates the unauthorized collection, collation, and sale of a registrant's information. This access often results in the same tangible consumer harms that the ICANN community is dedicated to combating, such as abuse, phishing attacks, and domain hijacking.

While the vast majority of domains are registered in good faith and used responsibly, the RySG recognizes that there are circumstances where third parties (such as law enforcement, security researchers and intellectual property holders) have a legitimate interest in accessing non-public registration data. As such we participated in good faith to develop a standardized system for disclosure. However, a standardized system for disclosure does not mean rolling Whois back to the open publication of personal data nor does it mean creating a system that rubber stamps requests for disclosure. In many cases a balancing of the request against the rights of the registrant must be performed to determine if disclosure is appropriate.

In determining who makes the decision to disclose, the CPH was unequivocal that if registries and registrars are liable for disclosure decisions, then they must make that decision. Likewise, ICANN Org considered the diminishment of liability for Contracted Parties an absolute prerequisite for proceeding with centralized decision-making. The RySG would like to thank ICANN org for developing a "Unified Access Model" (UAM) and seeking guidance from Data Protection Authorities (DPAs) on whether liability could be shifted from registries and registrars to ICANN. Through ICANN's outreach efforts and the advice provided by the working group's legal counsel it is clear that liability cannot be shifted. The CPH, particularly registrars who have a direct relationship with the data subjects and collect and hold their registration data, are liable for disclosure decisions regardless of who makes that decision.

Given that reality, a hybrid model was proposed and accepted as a reasonable path forward. The Hybrid model solves the fragmentation problem, repeatedly cited by requestors, by providing a standard, centralized submission portal to route requests to the appropriate party. Authenticated requestors gain advantages in efficiency, predictability, and

monitoring, while Contracted Parties still retain the ability to make disclosure decisions via a transparent process. This represents not only a compromise solution with wins for both sides, but also reflects what is appropriate and permitted under data protection law.

The RySG is committed to responsibly processing registrant data in accordance with applicable law while also providing disclosure to those with a legitimate interest in that data. We note the concerns raised by other groups, including many representing likely requestors, however we believe the 18 recommendations creating the System for Standardized Access and Disclosure (SSAD) represent a marked improvement over the current process in a manner consistent with data protection law. While the outcome may not be perfect it does address the scope and goals of the EPDP Phase II charter to discuss a standardized system for access/disclosure of data that complies with law. Given the above, the RySG voted in support of the EPDP phase 2 recommendations.

The RySG supports the statement from the RrSG.