

## **RrSG preamble for their input form responses on the EPDP Initial Report**

On behalf of the Registrar Stakeholder Group, we welcome the opportunity to comment on the Expedited Policy Development Procedure (ePDP) Working Group's Initial Report. The positions stated within this input form reflect the current state of the issues, and are subject to change in response to developments in the ePDP, or external to ICANN.

For over 20 years, Registrars have been active participants in the ICANN community, and GNSO policy development. During this time, Registrars have voluntarily accepted Consensus Policies that add costs to our operations, constrain innovation, and burden our customers with complex procedures. We have accepted these obligations because we believe they further the goals of enhancing the security of the Domain Name System and promoting competition. By contributing to a robust governance model, Registrars, but especially our Registrant customers, have benefited from the continued success of the domain name industry.

All Consensus Policies created burdens, but resulted in proportionally larger benefits for the entire industry. The current ePDP, however, is different. Because this ePDP seeks to reconcile our contractual obligations with external privacy regulations, Registrars are unable to negotiate or make concession on a number of topics. These topics, as expressed as recommendations in the ePDP Initial Report, would create substantial legal risks solely for Registrars, and solely for the benefit of other parties. Additionally we, as an industry, should be very mindful of artificially creating additional barriers to entry to individuals and organizations around the world who want to register and use domain names.

We recognize that the WHOIS database has evolved to become an authoritative directory of domain names and registrants, but it lacked any legal legitimacy to serve this function. Previous and new data protection laws, chiefly the GDPR, have exposed this disconnect between the legality of the WHOIS system, and the dependencies placed upon it.

Registrars recognize the utility of WHOIS data for various purposes, like law enforcement, IP protection, and cybersecurity research. And we appreciate that a cottage industry has evolved to harvest (often in contravention of WHOIS terms of use and local laws), repackage, and resell WHOIS data. But the regulatory landscape has shifted dramatically over the last few years. Governments around the world are rethinking their role in legislating protections for the personal data of their citizens, and imposing severe penalties for violators. At the same time, many of these same governments are expanding the fight against online crime and abuse. It is no exaggeration to state that WHOIS, ICANN and its Contracted Parties, are caught in between these agendas.

Governments haven't yet found the balance between these contending goals, nor are they aligned with one another. But as private companies operating internationally, Registrars cannot accept liability that results from the actions of our customers, or ICANN, or other parties. We cannot compromise on these points, because the concessions required are not ours to make.

This is the context supporting our comments within the input form, and our support or opposition for the various Recommendations. Registrars will continue to be active contributors to the work of the ePDP, as it seeks to develop legally sound RDS/WHOIS framework that preserves value for WHOIS stakeholders, while safeguarding the data of our Registrant customers.

