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## AT-LARGE ADVISORY COMMITTEE

### ALAC Statement on Addendum to the Initial Report of the Expedited Policy Development Process (EPDP) on the Temporary Specification for gTLD Registration Data Team - Phase 2

#### Introduction

On 26 March 2020, Public Comment opened for [Addendum to the Initial Report of the Expedited Policy Development Process \(EPDP\) on the Temporary Specification for gTLD Registration Data Team - Phase 2](#). On the same day, an At-Large [workspace](#) was created for the statement. The At-Large Consolidated Policy Working Group (CPWG), decided it would be in the interest of end users to develop an ALAC statement on the Public Comment.

A drafting team was formed, including Hadia Elminiawi, ALAC Member of the African Regional At-Large Organization (AFRALO), and Alan Greenberg, member of the North American Regional At-Large Organization (NARALO). The members of the drafting team are also the ALAC Members serving on the EPDP II.

On 23 April 2020, Hadia Elminiawi posted a first draft of the ALAC statement to its At-Large workspace. The first draft was circulated on the CPWG mailing list and posted to the CPWG weekly agenda by ICANN Policy staff in support of the At-Large community. Alan Greenberg provided suggested comments on the first draft.

On 29 April 2020, after several CPWG meetings discussing the Public Comment, Hadia Elminiawi and Alan Greenberg presented the outline of the draft ALAC statement to the At-Large community. This new version incorporated revised text by Hadia Elminiawi and Alan Greenberg and incorporated issues raised by others in At-Large and following discussion with other groups within ICANN.

On 01 May 2020, Alan Greenberg posted a revised draft to the At-Large workspace incorporating the issues discussed during the CPWG meeting. A final call for comments was sent to the ALAC and CPWG mailing lists.

On 05 May 2020, the drafting team finalized the ALAC statement.

On 05 May 2020, the ALAC Chair, Maureen Hilyard, requested that the statement be transmitted to the ICANN Public Comment process, copying the ICANN staff member responsible for this topic, with a note that the statement is pending ALAC ratification.

## **ALAC Statement on Addendum to the Initial Report of the Expedited Policy Development Process (EPDP) on the Temporary Specification for gTLD Registration Data Team - Phase 2**

The ALAC thanks ICANN for putting forward the EPDP phase two addendum to the initial report of the gTLD registration data for public comment and takes this opportunity to provide its comments herein.

### **Preliminary recommendation #20 Display of Information of affiliated vs. accredited privacy/proxy providers**

Since all domains registered via accredited privacy/proxy services providers will be labeled as such in the domain registration data, the ALAC fully supports the recommendation. Should the domain registration be done via accredited privacy-proxy provider the data must not be redacted.

The ALAC notes that in the recommendation and the text, there are multiple references to “data associated with a natural person”. In fact a privacy/proxy registration may mask the data of ANY registrant, whether natural or legal person. As the recommendation stands, it might be construed that masking of the p/p service RDDS data would be allowed if the underlying registrant is a legal person, and that was not what was intended.

The ALAC also notes that Privacy & Proxy Services Accreditation Issue (PPSAI) PDP implementation has been halted pending the EPDP outcomes. The EPDP has determined that there is no need for the PPSAI implementation to be halted. The PPSAI PDP starting in 2013 and the recommendations were approved by the Board in 2016. The implementation MUST be completed with haste and the EPDP must make a clear recommendation to that effect.

### **Preliminary Conclusion – Legal vs. Natural Persons**

On April 9<sup>th</sup>, the EPDP team received legal advice from Bird & Bird that includes information relevant to some concerns related to the differentiation between legal and natural persons’ registration data. In response to the concern that registrants might wrongfully self-identify themselves the legal advice says independent verification measures that would identify miss-labelled registrants would be considered a reasonable accuracy measure. In addition, Bird & Bird had previously provided other measures that could be taken to address this issue. Previous memos have addressed concerns related to the data of the legal persons including personal information of natural persons. In addition, concerns related to the practicality and costs associated with the differentiation are currently being addressed through a survey conducted by ICANN org. The survey addresses the feasibility and costs, examples of industries that have successfully implemented the differentiation between legal and natural persons’ registration data and the various risks associated with the differentiation, the result of the survey should be available in May.

Taking into account:

- The interest of the Internet end-users and their right to be able to confirm the legitimacy of websites registered by legal persons.
- Burdening the system with unnecessary requests and thus leading to an inefficient system for access/disclosure of none publicly available registration data.
- Wasting the information that we currently have and the other that would be available through the survey by not acting upon it.

The ALAC believes potential next steps are feasible at the current stage if the will exists.

For avoidance of doubt, the ALAC does not agree to return the issue to the GNSO for possible action (or inaction) at some unknown future date.

The ALAC understands that differentiation may be difficult for existing registrations and that some time may be needed to fully implement differentiation, but that is not a reason to not immediately do so for new registrations and to begin the process of adjusting existing registrations.

### **Preliminary Conclusion – City Field Redaction and Preliminary Recommendation #21. Data Retention**

The ALAC supports the recommendations.

### **Preliminary Conclusion – OCTO Purpose**

In light of preliminary recommendation number 22, purpose two, the ALAC supports not adding a purpose in relation to ICANN's Office of the Chief Technology Officer. We believe that ICANN purpose number two would cover such a purpose for OCTO when required.

### **Preliminary Conclusion - Feasibility of unique contacts to have a uniform anonymized email address**

The ALAC cannot support the rejection of anonymized email addresses. The Bird & Bird memo clearly equates "masking" of email addresses with "the data controller hands over part of this dataset". The form of anonymization that the EPDP has considered does not include providing ANY PART of the original address and thus the term "masking" is entirely inappropriate.

The ALAC can see no way in which a party other than the Registrar who created the anonymization could associate the new address with the registrant. Moreover, saying that the anonymized address allows contact and is thus personal information implies the same thing for a Web Link which also allows contact.

The ALAC particularly notes that Item 9 of the Bird & Bird memo gives significant benefits to using an anonymized address.

Lastly, if the EPDP were to not allow anonymized email addresses to be published, then the ALAC believes that the EPDP has an obligation to recommend options for what IS legitimately allowed to ensure registrant contactability.

### **Preliminary Conclusion – Accuracy and Whois Accuracy Reporting System**

In light of the current information, provided by Bird & Bird in relation to the accuracy of the registration data, the ALAC is of the view that a recommendation with regard to accuracy is possible at this stage and that such a recommendation would either definitively address the issue or, at worst, would help and inform the GNSO scoping team. To that end, the ALAC does not support the recommendation. The EPDP Phase 1 Report committed that this issue would be covered, and that commitment was an essential component of the ALAC supporting that report.

The ALAC notes that the RDS-WHOIS2 Specific Review made a strong recommendation that resumed operation of the Accuracy Reporting System or something comparable is essential given the high rate of inaccuracy observed on pre-GDPR WHOIS data and the fact that the EPDP Phase 1 recommendation significantly reduced the number of possible contact points, increasing the potential for uncontactability. The SSR2 Specific Review makes a comparable recommendation in its draft report.

### **Preliminary Recommendation #22. Purpose 2**

In light of the EDPB letter and ICANN board recommendation in relation to this ICANN purpose, the ALAC fully supports adding the stated purpose to the ICANN purposes for processing gTLD registration data mentioned in recommendation one of the EPDP phase one final report.