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FOR DISCUSSION PURPOSES

The [Final Report](#) on the GNSO's Thick Whois Policy Development Process included the following recommendation.

***#3: As part of the implementation process a legal review of law applicable to the transition of data from a thin to thick model that has not already been considered in the [EWG memo](#) is undertaken and due consideration is given to potential privacy issues that may arise from the discussions on the transition from thin to thick Whois, including, for example, guidance on how the long-standing contractual requirement that registrars give notice to, and obtain consent, from each registrant for uses of any personally identifiable data submitted by the registrant should apply to registrations involved in the transition. Should any privacy issues emerge from these transition discussions that were not anticipated by the WG and which would require additional policy consideration, the Implementation Review Team is expected to notify the GNSO Council of these so that appropriate action can be taken.***

ICANN is currently undertaking the called-for legal review. Consistent with recommendation #3, the focus of the review of law relates to issues associated with the transition from thin to thick Whois, not on general questions of data privacy protection laws. All of the Whois data at issue is already made available to the public in the thin Whois model, and ICANN's Registrar Accreditation Agreement obligates registrars to notify each registrant of the purposes for which personal data is being collected, the intended recipients or categories of recipients of the data, which data must be provided mandatorily and which (if any) are voluntary and how the registrant may correct errors in the data. The RAA also requires the registrar to obtain the registrant's consent to the foregoing. Thus, the intention of the recommendation is not to open a general analysis of the existing framework surrounding the thin Whois model or the thick Whois model generally (both of which have existed for many years), but rather to focus on specific new risks, if any, that may be posed by the transition to the thick Whois model for the three impacted TLDs.

The analysis will focus on what types of personal data protection issues may arise with respect to transition from thin Whois to thick Whois. For example:

- Are the RAA requirements concerning data protection, assuming implemented as required, sufficient to support the transition?
- Taking into consideration how registrars have implemented the consent requirements, are such consents sufficient to authorize the transfer to and display of the Whois data by a registry, or do additional consents need to be obtained?
- If a registrant previously consented to the sharing of its personal data in a broad enough way that would allow a registrar to provide data to registries in accordance with the thick Whois policy recommendations, might the sharing of data required by the recommendations create grounds by which the registrant

could withdraw its consent to share data?

- Does the transfer or storage of Whois data implicate a right on the part of the registrant to require correction and erasure?
- Is the transfer of data permissible from registrars located in various jurisdictions to a registry operator in the United States, and if so, what mechanisms must be in place to permit such transfers? .

The analysis will also consider implications arising from the transfer of data from one country to another with a goal of proposing practical solutions to facilitate the implementation of thick Whois. Such recommended solutions may include, for example:

- Standard clauses that, if used by registrars in their registration agreements, would address the consent, legitimate use, purpose limitations, and other issues in most jurisdictions.
- Safe harbors that could be invoked to transfer data to registries in the U.S. or other jurisdictions.
- Recommendations on regionalization of thick Whois data stores.
- Mandatory notices and purpose descriptions to be provided to registrants concerning the thick Whois database.
- Standard data protection requirements, specifications, and limitations to be implemented as part of the thick Whois to address security and data integrity issues.
- Standard onward transfer agreements consistent with legal requirements to impose adequate protection measures on third parties that manage the thick Whois data.