

Coalition for Online Accountability
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 April 17, 2019

**Public Comments of COA to the Board on the EPDP Phase 1 Final Report**

The Coalition for Online Accountability (“COA”) represents the interests of leading copyright industry associations, organizations and companies in ICANN.[[1]](#footnote-1) COA appreciates the opportunity to provide comments to the Board on the EPDP Phase 1 Final Report from the perspective of copyright owners who rely on WHOIS data to protect their rights online and to combat illegal activity.

 **Recommended Board Actions**

Because the Phase 1 Final Report (“Phase 1 Report”) represents only a portion of the work chartered for the EPDP and because a number of issues addressed in the Phase 1 Report have not been resolved, COA recommends that the Board undertake the following actions in conjunction with its consideration of the Phase 1 Report:

1. Acknowledge Specific Purposes Related to Legitimate and Public Interests

The Recommended Purposes from the Phase 1 Report do not specify important interests related to safety, combatting illegal activity and other public interests that also account for and justify the initial collection and processing of WHOIS data. While the Temporary Specification acknowledges and sets forth such purposes, including consumer protection, investigation of cybercrime and intellectual property, the Phase 1 Report Recommendations do not identify these critically important purposes. This runs counter to the GDPR, which requires that purposes for personal data processing be set forth with specificity at the time the data is collected.

*We therefore recommend that the Board specifically acknowledge the importance of these purposes and supply guidance concerning their inclusion in the Phase 2 Final Report.*

2. Provide Guidance that Work of the EPDP Must Include a System for Standardized Access to Non-Public Registration Data

The Phase 1 Report represents just a portion of the work of the EPDP team as set forth in the charter of the EPDP. The charter is clear that the EPDP Team shall, once the gating questions are answered, produce a system for standardized access to non-public registration (WHOIS) data. It is critical that in fulfilling ICANN’s mission and core values to “preserve and enhance . . . the stability, reliability, security, global interoperability, resilience, and openness of the DNS and the Internet” that access to non-public registration data for legitimate interests and public interests be addressed in a manner that ensures timely and reliable access to such data. We are concerned that some language from the Phase 1 Report is inconsistent with this critical imperative, including the Recommendation 3 language that asks whether a system for standardized access to non-public registration data “should be adopted.”

*We ask that the Board make clear that it expects the EPDP Team to produce and deliver a system for standardized access to non-public registration data as part of its Phase 2 work and emphasize that the work of the EPDP cannot be completed and adopted absent such a system. In addition, we ask that the Board give guidance that this Phase 2 work needs to be completed expeditiously and that the Board* *direct ICANN org to supply resources to the EPDP Team (e.g., services of outside mediators and outside counsel) so that the Phase 2 work can be successfully completed.*

3. Direct ICANN to Implement the Privacy and Proxy Service Provider Accreditation Issues Working Group (PPSAI) Recommendations Without Delay

To the extent privacy and proxy service providers are in any manner subject to the work of the EPDP Team, that work has been completed in Recommendation 14 of the Phase 1 Report. Therefore, the EPDP does not warrant or justify the continued blocking and delay of implementation of consensus policies that have been approved by both the GNSO Council and the Board. Our concerns on this point were articulated in the IPC’s letter to the Chairman of the Board, Goran Marby and Cyrus Namazi of November 2018. <https://www.icann.org/en/system/files/correspondence/ipc-to-chalaby-et-al-12nov18-en.pdf> In addition, we note that in its consensus advice in the ICANN64 GAC Communique, the GAC clearly advised the Board to re-start “implementation processes for relevant existing policies, such as the Privacy Proxy Services Accreditation Issues Policy.” In addition, the GAC clearly explained that “the implementation of the PPSAI need not be deferred until the completion of the EPDP.” See: <https://gac.icann.org/contentMigrated/icann64-kobe-communique>

*We request that the Board direct ICANN to allow the nearly finished work of the Privacy and Proxy Service Provider Accreditation Issues Working Group/Implementation Review Team to be completed as expeditiously as possible so that this important consensus policy moves forward to speedy implementation*.

4. Give Due Consideration to the Advice from the GAC, ALAC and SSAC

The GAC, ALAC and SSAC in their statements, consensus advice and reports related to WHOIS data and the EPDP all emphasize concerns about the need for accurate WHOIS registration data, the need for reliable and efficient access to non-public registration data, the urgent need for a standardized access system, and guidance that ICANN avoid misapplication of the GDPR by, for example, suppressing public

access to registration data of legal entities, as opposed to natural persons. (See e.g., GAC Consensus Advice from ICANN 64 GAC Communique, ICANN64 Joint GAC – ALAC Statement on EPDP, SAC 101 and 104)

*We urge the Board to give weight to the consensus advice from the GAC, the statements of the GAC and ALAC (including joint statements) with respect to the EPDP and the reports and statements from the SSAC. That body of advice, taken as a whole from those three Advisory Committees, is both internally consistent and raises critical issues that should be taken into account by the Board when considering adoption of the Phase 1 Report, as well as in giving direction with respect to Phase 2 of the EPDP.*

Respectfully submitted,

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1. The members of COA are Broadcast Music, Inc.; Entertainment Software Association; Motion Picture Association of America; Recording Industry Association of America, NBCUniversal, The Walt Disney Company; and WarnerMedia. [↑](#footnote-ref-1)