

RySG response to comments made on recommendation to remove Appendix C

The RySG is grateful for the discussions and for the efforts which have been put into the consideration of our proposal. In response we will simply note that the intention of the RYSG recommendation is to prevent unnecessary duplication of the efforts of the WG; we respectfully submit that the efforts of our group should stay true to the scope of the policy development process, and our recommendation, and subsequent email, remain valid. Indeed our recommendation goes into detail regarding how to **include** all concepts and requirements of Appendix C, but in a manner that is comprehensive, GDPR compliant, and compatible with contractual relationships.

However, to make specific reference to the matters raised, we would caution against any suggestion that it is the job of the EPDP to interpret the legal obligations of the contracted parties, it is our job to provide policy which, at a minimum does not conflict with the law, and yet provides enough necessary flexibility to allow for the Security and Stability the DNS. Policy should still be capable of being implemented effectively by the relevant contracted party, regardless of jurisdiction or other relevant obligations on that particular party.

We note the following specific responses to comments made:

- 1) RDDS is dealt with in much detail in Appendix A and shall be the subject our our discussion and considerations at that point. It is not necessary to duplicate such efforts in Appendix C. In addition, RDDS and RDAP implementation are being dealt with (as indicated in Appendix A) in separate processes.
- 2) The comment relating to Section 2 of Appendix C, specifically references Section 4 of the Temp Spec. Again we note that in the interest of maximizing the WG's time, we should avoid unnecessary duplication of work by considering the same issues in separate parts of the document.
- 3) Proposed changes to section 3.1 / 3.9 of Appendix C proposed appear mainly cosmetic.
- 4) Regarding Section 3.4, it is not for ICANN to identify or specify the 'documentation' necessary to satisfy the requirements of Article 30. Article 30 provides all the necessary clarity as to what is expected for the record of processing. The EPDP should focus on ensuring that a sound policy exists to support the identification and subsequent compilation, by the contracted parties, of the required elements as listed in the Art 30 "record of processing" provisions, rather than a mere purported repetition of the list itself.
- 5) Noting in particular section 3.5, standardised privacy notices are to be completely discouraged, as it fails to consider the necessity of each contracted party to draft a notice with due regard to their individual and specific obligations. This simply reflects the numerous jurisdictional differences, business models and of course, any applicable legal opinions. It is submitted that standardized 'privacy notices' are not a suitable inclusion in Appendix C. Furthermore inclusion of a specific contractual term such as 'x must provide a standard privacy notice as drafted by ICANN', is not an appropriate inclusion for this policy.
- 6) **"Additional terms"**: The RYSG does not support the idea of the creation of further 'Appendix C' terms regarding 'access'; we note that access is specifically dealt with, and contemplated for in 'Appendix A'. Whereas the EPDP may develop more specific policy clarifications on the 'Appendix A' inclusion, the time of the WG may be better

spent on such clarifications, rather than attempting the creation of additional, duplicate 'access' inclusions in 'Appendix C'.

General Comment regarding The inclusion of a data processing table.

The data processing table is a helpful concept, but the RYSG has serious concerns regarding the accuracy of the existing table's reflection of actual data flows and the statements therein made.

We firmly believe that the EPDP must focus, as a primary task, on the proper identification and designation of the parties and the ultimate output of this task, may very well be a table visually similar to the one found in Appendix C. We further believe that the WG made an excellent start on this particular effort during our 11 September 2018 and our commencement of analysis and discussion of Thomas Rickert's document. Our original recommendation, however, stands; the table present in Appendix C is both incorrect in content and in intention, as it was included purely to give legitimacy to the attempted hybrid DPA /JCA provisions found in the remainder of the appendix, this is outlined in detail in our initial recommendation. The identification and designation of the parties in the domain registration ecosphere is of far more importance than its current consignment to Appendix C.