The IPC does not agree with Registries Stakeholder Group’s (“RySG”) suggestion that Appendix C of the Temporary should be removed from the Temporary Specification and not be part of a final Consensus Policy. It is our view that the retention of Appendix C, in an edited form, is critical to the development of a successful Consensus Policy and that Appendix C is and should remain as part of the EPDP’s scope, in order to lay out and develop *inter alia* a comprehensive and exhaustive framework for ICANN, Registrars and Registries to process personal data comprised within Registration Data in accordance with the GDPR.

The approach taken towards GDPR compliance, generally in relation to all processing activities undertaken, in particular with regard to granting access to Registration Data, should be applied consistently by ICANN, Registrars and Registries in order to avoid fragmented and possibly non-compliant activities. Failure to do so could otherwise lead to a disjointed system and risk significantly reducing the availability of or access to Registration Data by those with valid legitimate interests, which is required for the continuing security and stability of the Internet.

We disagree with the RySG for the following reasons:

* **The EPDP Charter requires the continued consideration of Appendix C.**

Pursuant to the EPDP Charter, the EPDP is required to consider issues related to providing access to Registration Data, as well as determining valid purposes and legal bases for certain processing activities (particularly the collection and transfer of Registration Data) by Registrars and Registries. As a result, we agree with the notes in the EPDP Charter clarifying that questions on these issues must be resolved before work on a standardized model – this is primarily because pursuant to the GDPR, such processing requires the establishment of legitimate purposes and corresponding legal bases to ensure GDPR compliance.

It is therefore within the EPDP’s mission scope to consider the purposes and legal bases for which all interested parties can lawfully process Registration Data, including, in particular, how ICANN, Registrars or Registries can and should disclose or grant access to some or all of that data to each other, or to other interested parties (including members of the public). The inclusion of Appendix C and continued discussion on its contents is integral to achieving this.

* **The requirements of Appendix C should not be deferred to ICANN’s contracts.**

The ultimate aim of the EPDP is to develop a Consensus Policy, **not** to propose changes to ICANN’s agreements with Registrars or Registries. As a result, the issues and questions around Appendix C should not be ignored with the expectation that they will or should be addressed contractually by ICANN with the Contracted Parties.

Pursuant to ICANN’s Bylaws, it is clearly within ICANN’s mission to establish governing policy rules around the purposes and associated legal bases under which ICANN, Registrars and Registries can provide access to and generally process personal data comprised in Registration Data. The requirements in Appendix C fall squarely within ICANN’s policy scope.

Furthermore, while the GDPR requires contracts between joint controllers and between controllers and processors to specify certain information and/or obligations, this is separate and apart from the obligation to make clear the limited and specified purposes for purposes and the legal bases for said activities so that the data subject is fully aware of the activities and its rights are being protected. This is why Appendix C was put in the Temporary Specification (i.e. pursuant to Arts. 26 and 28 of the GDPR respectively), the GDPR does **NOT** require that controllers set out their purposes and associated legal bases for their own processing of personal data in data protection/processing agreements or similar contracts, nor have we encountered this approach as being in any way commonplace (as suggested by the RySG). In fact, while contracts between controllers will typically contain obligations and/or warranties around compliance with applicable data protection laws, such as the GDPR, how such compliance is to be achieved is usually **not** prescribed in the contract - instead, for the most part, this is usually left up to each controller to determine for themselves. The need and requirement for Data Processing Agreements is determined by the Controller separately and only in those instances where necessary, based on the activities the processor is performing in relation to personal data for or on behalf of the Controller.

Furthermore, leaving the issues raised by Appendix C to separate negotiation also risks a fragmented approach – instead we suggest that it is much more likely for ICANN and the Contracted Parties to ensure compliance with the GDPR through following a common framework with respect to purposes and legal bases of their processing of Registration Data.

In light of the above, we also support Margie Milam’s proposal for the retention of Appendix C for the following reasons:

* Appendix C provides the detail lacking from other parts of the Temporary Specification, which are needed in order to ensure ICANN and the Contracted Parties take a concerted, common approach to compliance with the GDPR.
* Appendix C will prevent fragmented approaches to GDPR compliance and avoid the need for additional interpretation of the application of the GDPR to ICANN and the Contracted Parties.
* Appendix C will help ensure that the principles of transparency and accountability required by the GDPR are applied consistently across ICANN and the Contracted Parties for the benefit of all interested parties and the Internet community (and arguably the public) as a whole.