**Recommendation 18 – Reasonable Access (Updated Language for Consideration) (Formerly Rec. 12)**

The EPDP Team recommends that the current requirements in Sections 4.1 and 4.2 of Appendix A to the Temporary Specification in relation to access to non-public registration data, upon expiration are replaced with the criteria below and finalized through the requirements set during the implementation stage, recognizing that work in Phase 2 on a system for Standardized Access to Non-Public Registration Data may further complement, revise, or supersede these requirements. In addition, the EPDP team recommends that when a system for Standardized Access to Non-Public Registration Data is developed, the need for a policy governing Reasonable Lawful Disclosure outside of that model will be required.

The EPDP Team recommends that the new policy will refer to “Reasonable Lawful Disclosure of Non-Public Registration Data” or “Reasonable Lawful Disclosure”, instead of ‘Reasonable Access’ and that Registrar and Registry Operator must process and respond to Requests for Lawful Disclosure.

The basic criteria for Reasonable Lawful Disclosure are as follows: First, a

Request for Lawful Disclosure must follow the format required by the Registrar or Registry

Operator and provide the required information, which are to be finalized during the implementation phase (see below). Second, delivery of a properly-formed Request for Lawful Disclosure to a Registrar or Registry Operator does NOT require automatic disclosure of information. Third, Registrars and Registry Operators will consider each request on its merits, including the asserted GDPR legal bases.

Registrars and Registry Operators must publish, in a publicly accessible section of their web-site, the mechanism and process for submitting Requests for Lawful Disclosure. The mechanism and process should include information on the required format and content of requests, means of providing a response, and the anticipated timeline for responses.

The EPDP Team recommends that criteria for a Reasonable Lawful Disclosure and the requirements for acknowledging receipt of a request and response to such request will be defined as part of the implementation of these policy recommendations but will include at a minimum:

● Minimum Information Required for Requests for Lawful Disclosure:

* Identification of and information about the requestor (including, the nature/type of business entity or individual, Power of Attorney statements, where applicable and relevant);
* Information about the legal rights of the requestor and specific rationale and/or justification for the request, (e.g. What is the basis or reason for the request; Why is it necessary for the requestor to ask for this data?);
* Affirmation that the request is being made in good faith;
* A list of data elements requested by the requestor and why this data is limited to the need;
* Agreement to process lawfully any data received in response to the request.

● Timeline & Criteria for Registrar and Registry Operator Responses:

* Response time for acknowledging receipt of a Reasonable Request for Lawful Disclosure. Without undue delay, but not more than two (2) business days from receipt, unless shown circumstances does not make this possible.
* Requirements for what information responses should include. Responses where disclosure of data (in whole or in part) has been denied should include: rationale sufficient for the requestor to understand the reasons for the decision, including, for example, an analysis and explanation of how the balancing test was applied (if applicable).
* Logs of Requests, Acknowledgements and Responses should be maintained in accordance with standard business recordation practices so that they are available to be produced as needed including, but not limited to, for audit purposes by ICANN Compliance;
* Response time for a response to the requestor will occur without undue delay and in any event within [X business] days of receipt of the request. (A finalized time frame to be set during implementation.)
* A separate timeline of [less than X business days] will considered for the response to ‘Urgent’ Reasonable Disclosure Requests, those Requests for which evidence is supplied to show an immediate need for disclosure [time frame to be finalized and criteria set for Urgent requests during implementation].

The EPDP Team recommends that the above be implemented and further work on defining these criteria commences as needed and as soon as possible.

[**While the EPDP Team is confident that the criteria enumerated in this recommendation work for data disclosure requests relating to civil claims, the EPDP Team did not yet have an opportunity work on policy for LEA disclosure requests. It may well be that LEA disclosure requests can be honored following the criteria in this recommendation, but there may be different criteria or processes that need to be followed depending on the jurisdiction of the requesting LEA, the alleged crimes involved and the location of the contracted party as a condition for the contracted party to be entitled to or be required to disclose data.**]