**Privacy Sub-Team – Draft 26 April 2016**

Each team to consider their total output to address the following questions[[1]](#footnote-1):

(i) Did this input inventory produce any insights to inform the WG’s work plan?

Draft response:

(ii) Which inputs are likely to be the most relevant during WG deliberations and why?

Draft response (based on input received during 20/4 meeting):

* SAC 054, because [to be completed]
* EWG Recommendations, including statements, because [to be completed]
* The EU Data Protection Directive 1995 (the best known of all data protection laws; the legal obligations of all countries in the EU)
* The Council of Europe's Treaty 108 on Data Protection (created in 1981, and signed about 47 countries within and outside the EU, this is a key founding document of comprehensive data protection laws)
* Professor Greenleaf's two articles (part of the same book) set out his studies showing that the adoption of data protection laws is growing rapidly -- and in 2015 the number of countries with comprehensive data protection laws surpassed those without data protections laws. More than a majority of the countries of the world have now adopted comprehensive data protection laws and legal frameworks.
* [Schrems v.Data Protection Commissioner (2015)/EU-US Privacy Shield (2016) - very recent cases and agreements which clearly show that rigorous enforcement of EU data protection laws is on the rise by high courts and their decisions are forcing new agreements to be negotiated which raise the legal requirements for transferring data from the EU countries to other parts of the world. The new EU-U.S. Privacy Shield is an important example of these higher legal requirements. The Article 29 Working Party Opinion on the Privacy Shield -- only about two weeks old -- is important for its discussion of these newest of major legal data protection frameworks.]
* Opinion 2/2003 on the Application of the Data Protection Principles to the Whois directories is the Article 29 Working Party's opinion expressly guiding ICANN on how to apply data protection laws and frameworks to the Whois issues. What could be more "on point" for our full Working Group's work?
* [McIntyre v. Ohio Elections Commission, a decision in 1995 by the US Supreme Court, affirming the importance of anonymous speech in creating an avenue for important, but unpopular and minority ideas to enter into a country's robust political, cultural and artistic discussions. In this decision, the US Supreme Court found that anonymity speech is a protected under the US First Amendment and a person cannot be forced to put her/his name and address on all of statements.]
* Thick Whois PDP report, and the legal review presented to the Implementation Review Team on Thick Whois (this is document #6 in the list from the consolidated PDF) is highly relevant, since it represents the most recent thinking from ICANN concerning the impact of privacy/data protection laws on one aspect of the current RDS (a/k/a Whois).
* Article 29 opinions, especially all those directed to ICANN

(iii) Which inputs, if any, generated the most discussion within the small team?

Draft response:

(iv) Which inputs may be obsolete or super-ceded by subsequent work?

Draft response:

* A lot of documents in the compilation are based on the EU Data Protection Directive 1995 which will be replaced by the new EU Data Protection Regulation. Need to confirm whether this affects any of the other inputs / positions. For example, the opinions by the Article 29 WP may be obsolete as these were interpreting the 1995 directive. Consider contacting the Article 29 WP whether there inputs are still considered relevant although they may not be able to focus on that now?
* Are there documents that are absent from consideration?

(v) What input gaps, if any, may need to be addressed later?

Draft response:

* Could be useful to include WHOIS Reg ID study findings which differentiated between type of entity (eg corp, individual) and presence of potentially commercial activities associated with domain

(vi) Other key takeaways from this input inventory the team wishes to share with the WG

Draft response:

1. Please see ‘[**Plan to consolidate summaries and complete & present team outputs**](https://community.icann.org/download/attachments/58734473/RDS-InputTeams-Plan-12April-updated.pdf?version=1&modificationDate=1460488904000&api=v2)**’** for further details on the overall agreed approach for sub-teams. [↑](#footnote-ref-1)