Preliminary and informal GAC Leadership/Topic Leads' Messages and Questions to GNSO Council for GAC&GNSO Bilateral on March 24ᵗʰ

<u>EPDP Phase 2.A</u>

EPDP Phase 2a discusses important issues relevant to a functioning **Domain Name System**[1]. For example, data suggests that only around 11.5% of domains may belong to natural persons who are subject to GDPR, while contact data from 57.3% of all domains was redacted.

- **Does the GNSO support a more transparent Domain Name Registration System where non-personal data would be publicly available?**
- **If yes, what concrete measures would the GNSO support to achieve this goal?**

The GNSO will assess the progress achieved in EPDP Phase 2.A by the end of March. There are ongoing discussions to extend this period to the end of May.

The Working Group has progressed toward a mutual understanding of concerns expressed by the different constituencies. The team is currently focusing its efforts on two proposals to ensure publication of non-personal data. While additional work remains, including whether such mechanisms are mandatory or voluntary, the Working Group is identifying common ground towards solutions.

Policy development in these areas would contribute to restoring the utility of the WHOIS system by rendering accessible again (some) registration data that is not subject to GDPR. According to a study, a much larger set of registration data was redacted as compared to what is required by GDPR[2].

We express our confidence in the Working Group's capacity to achieve consensus for allowing the publication of a greater amount of non-personal data in line with the GDPR.

- **In light of the above, we strongly support the continuation of EPDP Phase 2A**.

<u>DNS Abuse Mitigation</u>

The SSR2 Final Report highlights the lack of progress made on mitigating DNS abuse. The GAC finds that most of the Recommendations contained in the report - if effectively implemented - would help reinforce the security, stability and resilience of the DNS.

What is the view of the GNSO on the general conclusions of the SSR2 report on DNS abuse and in particular with regard to the following findings:

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[1] According to the recent study *WHOIS Contact Data Availability and Registrant Classification Study*, 25 January 2021, more than half of the gTLD namespace—51.7%—is now controlled by unidentifiable parties. This is in contrast to the time before GDPR and ICANN's policy, where only 18% of domains were controlled by unidentifiable parties. These are domains that cannot be attributed to a registrant or user, either via WHOIS or by examining their web site content.

[2] That is "perhaps five times as much as is necessary". The study finds that contact data would have been redacted from 57.3% of all domains (adding proxy-protected domains, this means that 86.5% of registrants cannot be identified via RDS) while only around 11.5% of domains may belong to natural persons. Even if we consider that data related to legal persons contain some personal data, the study's data suggest that a substantial part of WHOIS data could not be accessed in the public interest.

> ➤ *"SSR2 Recommendation 8: Enable and Demonstrate Representation of Public Interest in Negotiations with Contracted Parties, and in particular Recommendation 8.1 according to which: "ICANN org should commission a negotiating team that includes abuse and security experts not affiliated with or paid by contracted parties to represent the interests of non-contracted entities and work with ICANN org to renegotiate contracted party contracts in good faith, with public transparency, and with the objective of improving the SSR of the DNS for end-users, businesses, and governments."*
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> ➤ *SSR2 Recommendation 9: Monitor and Enforce Compliance, and in particular:*
> *9.1 The ICANN Board should direct the compliance team to monitor and strictly enforce the compliance of contracted parties to current and future SSR and abuse-related obligations in contracts, baseline agreements, temporary specifications, and community policies.*
> *9.2 ICANN org should proactively monitor and enforce registry and registrar contractual obligations to improve the accuracy of registration data.*
>
> ➤ *The SSR2 Review Team concludes that despite the above commitment, the current ICANN-coordinated system does not sufficiently address DNS abuse and its associated harms. Groups within and outside the ICANN community have noted this gap for many years.[3]"*

- **Would the GNSO support expedited short-term measures, including more robust contract enforcement, to address well-identified issues, in parallel to launching a longer-term policy process?**

Accuracy work-stream

As the GAC has previously emphasized, including in the [GAC Minority Statement on the EPDP Phase 2 Final Report](): *"The accuracy of domain name registration data is fundamental to both the GDPR and the goal of maintaining a secure and resilient DNS. The GDPR, as well as other data protection regimes and ICANN's Registrar Accreditation Agreement, require data accuracy and such accuracy is critical to ICANN's mandate of ensuring the security, stability, reliability, and resiliency of the DNS."*

The GAC agrees that measuring data accuracy is also important. However, measurement and monitoring are not substitutes for accuracy policy. As ICANN org acknowledges (p.16 of the ICANN Org Briefing *"Registration Data Accuracy Requirements and the European General Data Protection Regulation (GDPR)"*: *"ARS forms only one part of the discussion over accuracy"*, referring also to other important policy aspects (e.g., verification requirements, accuracy standards, update mechanisms and reactions to be taken in cases of inaccurate data, etc.) The SSR2 Final Report also highlights the importance of monitoring and enforcement of contractual obligations to improving the accuracy of registration data (Recommendation 9.2). Accordingly, the GAC continues to support the effective implementation and enforcement of existing accuracy requirements and short term measures/procedures to help improve the

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[3] *Footnote 38 : "Examples: "Open Letter to the ICANN Community from the Registries Stakeholder Group," 19 August 2020, https://docs.wixstatic.com/ugd/ec8e4c_00d2dbac27b24330b8342686e9c2e53a.pdf , and a Letter from the ICANN Business Constituency to the ICANN Board of Directors, Göran Marby, ICANN President and CEO, Keith Drazek, GNSO Council Chair, and the ICANN Community, 28 October 2019, https://www.bizconst.org/assets/docs/positionsstatements/2019/2019_10October_28%20BC%20Statement%20on%20DNS%20Abuse.pdf "*

accuracy of gTLD registration data. In addition, the GAC also continues to support the prompt launch of the policy development on improving the accuracy of registration data.

- **Does the GNSO Council support such an approach?**
- **When in your view could the policy work on accuracy start?**

As a result of the above consideration, we note that **any study on accuracy,** if deemed necessary, **would need to have a broader scope than the mere measurement aspect.** For instance, the ICANN Org Briefing *"Registration Data Accuracy Requirements and the European General Data Protection Regulation (GDPR)"* suggests that validation (under the RAA's WHOIS Accuracy Specification Program) is limited to the format of the data fields, and not to the content of the data (p. 9 of the same document, last paragraph). Hence, while the format of WHOIS data may have a high degree of accuracy (*see e.g.,* p.15), the ARS has not provided data on whether the substantive data is accurate in terms of identity. This because the ARS was implemented as a phased approach but failed to reach Phase 3, the identity phase (Phase 3). Given the importance of identity for accuracy checks, **an independent study on the accuracy of gTLD registration data would help provide useful insights to the ICANN community.**

- **Would the GNSO support the launch of such a study? We would propose that such a study be launched in parallel to and feed into a policy work on accuracy.**

The GAC would like to express its support to the GNSO on the accuracy work stream. **We stand ready to actively contribute to the work as part of the accuracy scoping team.**

- **Could you please confirm our understanding that the GAC will be fully involved in the scoping exercise?**

Approval of SSAD Recommendations that Lack Consensus

ICANN's mandate and policy development is founded upon a consensus-based multistakeholder process. However, many key Phase2 recommendations approved by the GNSO lacked consensus. The GAC withheld support for certain key recommendations because they did not "*strike the appropriate balance between protecting the rights of those providing data to registries and registrars, and protecting the public from harms associated with bad actors seeking to exploit the domain name system."* GAC Minority Statement on the EPDP Phase 2 Final Report; *see also* Minority Statements of ALAC, IPC/BC and SSAC. We further note that *"WHOIS data is used for a number of legitimate activities including: assisting law enforcement authorities in investigations; assisting businesses in combatting fraud and the misuse of intellectual property, safeguarding the interests of the public; and contributing to user confidence in the Internet as a reliable means of information and communication,"* hence it is crucial that any proposed system meet the needs of its users in terms of efficacy, timing and cost.

- **Given the divergent views by stakeholder groups on certain Phase 2 Recommendations, might the GNSO explain why it chose to approve *all* the Recommendations instead of sending back the Recommendations which required further work to achieve consensus?**
- **Might the GNSO point to other examples in which it has approved policy Recommendations which lacked consensus?**