

Recommendation 1

The RrSG does not have significant concerns with regard to Recommendation #1, Purpose #2. The Board's decision is aligned with our position since the very beginning of Phase 1, and is also aligned with the recent letter to ICANN from the European Commission.

Recommendation 12

With regard to Recommendation #12 (Registrant Organization Field), the RrSG would like the Board to fully appreciate the complexities around this Recommendation, and how we arrived at Rec 12.

- a. Rec 12 is a compromise between those who believe that the Registrant Org is not personal data, and those who believe it could possibly be personal data, or used to infer/obtain personal data via other sources (This last bit was supported by Bird & Bird).
- b. Registrants and Registrars have been using Registrant Org in non-standard ways for almost 20 years. We have a significant legacy of mixed uses and purposes for this field. There is no standardization across the registrar landscape in how this field is utilized.
- c. No matter what the outcome, the ePDP will effectively "change the rules" for Registrants who may have entered data years ago without regard for the privacy implications.
- d. We need to provide Registrants a path to confirm if the data entered in Registrant Org indicates that their domain name is actually registered by a legal (vs. natural) person. As this will result in the legal person's Org data being published, this needs to be an explicit confirmation, similar to opt-in consent.
- e. If a Registrant explicitly deletes the data in Registrant Org, then Registrars should make this change in their own databases, and at the Registry.
- f. But if the Registrant doesn't respond to attempts by the registrar to confirm the type of data subject they are, then that must be taken as an "opt-out" of the new rules supporting this field. (Privacy by Default)
- g. We have no method at this time to relay a consent status to the registry. Deletion of data is a workaround which allows the natural person's Org field to remain private, but which may cause databases to get out of sync, thus negatively impacting the accuracy of registration data
- h. If deletion was later found to be an error on the part of the Registrant, it is a trivial matter for them to re-enter the data.
- i. But if their personal data is exposed in error, then it cannot be un-exposed, and the Registrar/Registry involved could be subject to GDPR enforcement.
- j. Exposing the data by accident is an issue, but we also need to know our liability and responsibility under Art 17.2 of the GDPR.
- k. Where the controller has made the personal data public and is obliged pursuant to paragraph 1 to erase the personal data, the controller, taking account of available technology and the cost of implementation, shall take reasonable steps, including technical measures, to inform controllers which are processing the personal data that the data subject has requested the erasure by such controllers of any links to, or copy or replication of, those personal data.
- l. The latest decision of the Polish DPA (see: <https://iapp.org/news/a/polish-dpas-first-fine-pay-close-attention/>) indicates that

reasonable steps might involve a lot of WORK for us. Of course the first question here is, who is the controller? ICANN? CP's?

Possible solutions

- 1) The Board's concern was that deleting the Org field would result in a domain with no valid owner (e.g. first/last name is 'domain admin'). However, the option to delete the data is important for the reasons listed above. One solution would be to follow a process similar to what the EPDP team already agreed on in Rec 29, which says in part, "...prior to eliminating Administrative Contact fields, all Registrars must ensure that each registration contains Registered Name Holder contact information." We could add a similar obligation in Rec 12, that prior to deletion of the Org field data the registrar should ensure there's a valid registrant name.

- 2) Another alternative to deletion would be continued redaction if no opt-in is received so the registry would continue to only get the redaction notice/placeholder data (exact method TBD depending on Phase 1 IRT outcomes).