Submission to the ICANN EPDP
Regarding its Initial Report

General comments
Multiple reports have shown that most registrar and registry contracted parties (CPs) routinely and massively ignore their obligation to disclose registration data in response to reasonable, motivated and legitimate requests. In fact, most requests do not seem to be genuinely reviewed and do not even receive a response; when they do, the reasons for their denials are generally illegitimate. This experience leads us to express significant concerns about this Initial Report's approach to a System for Standardized Access/Disclosure to nonpublic registrant data (SSAD), and inspires the changes we propose.

Comments re: Recommendation 6 – Contracted Party Authorization
This is the Initial Report's weakest Recommendation, for two reasons.

First, it keeps the authority to grant or deny requests with the CPs. This will be not only incredibly inefficient but also certain to lead to the continued unaccountable denial of legitimate requests. We therefore strongly urge the EPDP to renew its efforts to centralize decision-making, by making it the default and reserving to CPs the right to decide in a set of limited and identified circumstances.

Second, it gives each Contracted Party excessive discretion to deny requests, without giving the requestor the opportunity to meaningfully challenge such denials. For example, the CP can decide that some or all of the requested registration data is not necessary: how could every CP acquire (and regularly update) expertise in all of the investigative needs and legal requirements of all of the many different types of requestors operating all around the world? We request that every instance of discretion given to the entity that decides whether to grant or deny disclosure be reviewed by the EPDP, that it be more narrowly framed and that the onus be put on that entity to actually demonstrate that its denial was warranted, rather than merely state a reason.

Comments re: Recommendation 9 – Response Time Service Level Agreements (SLAs)
We are concerned that the response time SLAs are too long and too easy to violate. First, we strongly believe that all requests should receive a response within 5 business days. a limit of 10 business days is unacceptably long, even more so as an average: otherwise, many requests that may be about material circumstances but not qualify as "urgent" under this policy could go unanswered for two or three weeks or more.

Second, violations of the SLAs need to be robustly enforced so that they remain rare, and become rarer still. We recommend that non-compliant CPs be found in breach of their Registration Accreditation Agreement (RAA) with ICANN, incur deterrent penalties, and be required to adopt measures that ensure their future compliance.

Comments re: Recommendation 12 – Query Policy
We are disappointed that this policy does not provide for "reverse lookup", i.e. the ability for a requestor to identify all the domains registered by the same malicious actor. It is a legitimate, basic and critical tool: withholding it would deliberately stunt legitimate investigations. We urge that the right to reverse lookup be provided for any requestor: who investigates cybersecurity threats or violations of

civil or criminal laws; who has demonstrated its bona fides through accreditation and has maintained them by complying with the SSAD policy; and whose legitimate interest has already been established when the requestor was granted access to the registration data on which the reverse lookup is based.

Comments re: Recommendation 15 – Financial Sustainability
We are concerned that on top of the significant operational costs we will incur to comply with the requirements of this policy, ICANN and the CPs will charge us when we ask for information about the threat actors – such as fraudsters, thieves, hackers, scammers, child abusers and the like – among their registrant customers. This financial model completely disincentivizes the CPs from making any effort to prevent these threat actors from becoming or remaining their customers. Requesting and receiving registration data should be free because the requirements imposed by this policy to become accredited and to request data are already stringent enough to prevent excessive use and abuse.

Comments re: Recommendation 17 – Logging
We believe that it is essential that the SSAD keep all of its participants accountable: this vitally depends on logging their actions so that they can be reviewed one by one and in the aggregate. Unfortunately, the logging requirements fall quite short of what they should be. Most glaringly, the requirement that they remain confidential is unacceptable: stripped of any GDPR-protected personal information, logging data must be made public by ICANN.

Comments re: Recommendation 19 – Mechanism for the Evolution of SSAD
Per our comments on Recommendation 6 (Contracted Party Authorization), we strenuously oppose keeping the authority to grant or deny requests with the CPs. If the EPDP nevertheless decides to do so, we strongly urge it to explicitly clarify that the mission of this Mechanism will be to drive the SSAD to centralization, and to require that it develop a plan with milestones to achieve that goal within a time certain.

List of 57 signatories

Artist Rights Alliance
Association of American Publishers (AAP)
Associazione Nazionale Esercenti Cinema (ANEC)
Associazione Nazionale Esercenti Multiplex (ANEM)
Associazione Nazionale Industrie Cinematografiche Audiovisive (ANICA)
Associazione Produttori Audiovisivi (APA)
Associazione Unione Italiana Editoria Audiovisiva (UNIVIDEO)
Audiovisual Producers Finland (APFI)
Bescherming Rechten Entertainment Industrie Nederland (BREIN)
Christian Music Trade Association
Coalition for Online Accountability (COA)
Copyright Alliance
Copyright Information and Antipiracy Centre
Coalition for a Secure and Transparent Internet (CSTI)
CreativeFuture
Danish Rights Alliance

European Audiovisual Production (CEPI)
European and International Booksellers Federation (EIBF)
Federazione per la Tutela dei Contenuti Audiovisivi e Multimediali (FAPAV)
Federation of European Publishers (FEP)
Federazione Industria Musicale Italiana (FIMI)
Fédération internationale des associations de producteurs de films (FIAPF)
Finnish Anti-Counterfeiting Group (FACG)
Finnish Music Creators' Association (Suomen Musiikintekijät ry)
Finnish Music Publishers Association (Suomen Musiikkikustantajat ry)
Hong Kong Recording Industry Alliance (HKRIA)
Independent Music Companies Association (IMPALA)
Independent Film & Television Alliance (IFTA)
Indian Music Industry (IMI)
International AntiCounterfeiting Coalition (IACC)
International Confederation of Music Publishers (ICMP)
International Federation of Film Distributors Associations (FIAD)
International Federation of the Phonographic Industry (IFPI)
IFPI Finland
IFPI Switzerland
Interactive Software Federation of Europe (ISFE)
International Union of Cinemas (UNIC)
International Video Federation (IVF)
Kroll
LIGA NACIONAL DE FÚTBOL PROFESIONAL (LaLiga)
National Association of Broadcasters (NAB)
National Music Council
National Music Publishers Association (NMPA)
Pelastakaa lapset ry (Save the Children Finland)
Productores de Música de España (PROMUSICAE)
Rättighetsalliansen (Sweden)
Recording Academy
Recording Industry Association of America (RIAA)
RettighedsAlliancen (Denmark)
Sociedad de Productores Fonográficos y Videográficos de Chile (PROFOVI)
SoundExchange
Transnational Alliance to Combat Illicit Trade (TRACIT)
U.S. Chamber of Commerce
Verein für Anti-Piraterie der Film- und Videobranche (VAP)
Verband Privater Rundfunk und Telemedien e.V. (VAUNET)
Worldwide Independent Network (WIN)
Związek Producentów Audio Video (ZPAV – Polish Recording Industry Association)