

HIGH-LEVEL NOTES FROM EPDP Team F2F SESSION (24-26 Sept 2018)

LAWFUL PURPOSES FOR PROCESSING

The EPDP Team focused its in-person meeting on the core, initial gating questions as outlined in its Charter. On day 1 of the three-day session, the EPDP Team tentatively agreed to consider a set of lawful purposes for processing domain name registration data. On days 2 and 3 of the meeting, the EPDP Team analyzed the data elements required for these purposes, the applicable lawful basis for each, and the processing activities and Data Controllers / Processors involved. This iterative process prompted updates to the wording of these purposes and other changes. The group expects further analysis will result and additional changes. This approach is expected to address a number of charter questions as outlined in the [EPDP Team's Charter](#). For more information on the tentative agreements, please refer to the data elements workbooks, which are denoted below, and can be found [here](#).

The purposes for processing registration are to:

- Establish the rights of a Registered Name Holder in a Registered Name and ensuring that the Registered Name Holder may exercise its rights in respect of the Registered Name ([Workbook A](#))
- Provide for lawful disclosure of registration data to third parties with legitimate interests to data that is already collected¹ ([Workbook B](#))
- Enable communication or notification to the Registered Name Holder and/or their delegated parties of technical and/or administrative issues with a Registered Name ([Workbook C](#))
- Provide mechanisms for safeguarding Registered Name Holders' Registration Data in the event of a business or technical failure, or other unavailability of a Registrar or Registry Operator ([Workbook E](#))

¹On the third day, the EPDP Team discussed various iterations of this purpose but ultimately agreed to revert to this original compromise language to allow for further deliberation before deciding on final wording. The following over-arching statements are included in the EPDP's tentative agreement of this purpose:

- This is a registry/registrar purpose
- The group has different viewpoints whether this is also an ICANN Purpose – we will analyze that more.
- We agree that we want third parties with legitimate interests to be able to have predictable, lawful access, and the EPDP policy must make that clear. (we didn't define what 'predictable' means).
- We are all going to bring this back to our constituencies.

- Handle contractual compliance monitoring requests, audits, and complaints submitted by Registry Operators, Registrars, Registered Name Holders, and other Internet users. ([Workbook F](#))
- Coordinate the development and implementation of policies for resolution of disputes² regarding the registration of domain names (as opposed to the use of such domain names). (ICANN bylaws Annex G and 1(1) section I(a) ([Workbook M](#)))

The EPDP Team has initially considered these purposes as ICANN purposes (“ICANN is requiring the processing of registration data in order to...”), apart from purpose B for which the following qualifying statement was agreed:

Finally, an additional purpose was verbally suggested during the meeting: Enabling validation of Registered Name Holder satisfaction (fulfillment) of registration policy eligibility criteria. ([Workbook N](#))

Participants did not discuss this purpose during the meeting to confirm which actors have this purpose and its implications for data collection and handling.

DATA ELEMENTS PROCESSING WORKBOOKS

Following the EPDP Team’s tentative agreement on the above-referenced purposes, the Team formed small groups to go through an exercise to develop the small groups’ feedback on questions related to the lawfulness of processing.

Specifically, and in order to address the Charter questions, the groups were tasked to identify relevant data elements (Charter Question 2b) required for each “purpose” in accordance with principles of data minimization and answer the following questions:

1. If the purpose is based on an ICANN contract, is this lawful as tested against GDPR and other laws?
2. Is the purpose in violation with ICANN's bylaws?
3. Who are the Data Controllers and Processors?
4. Is the processing necessary to achieve the purpose?
5. Do data elements require transfer to meet the purpose? (Charter Questions 2c, 2d, 2e, 2i)
6. Is publication of data by Registrar/Registry required to meet the purpose? (Charter Question 2f)
7. Are there any “picket fence” considerations related to this purpose?
8. What are the data retention requirements to meet the purpose? (Charter Question 2g)
9. Is additional information needed to adequately document the purpose?

² Further consideration to be given whether RDDRP, PDDRP and PICDRP need to be added here or considered separately.

LAWFUL BASIS OF PROCESSING

After a plenary group discussion that indicated there was uncertainty with regard to how to establish the correct lawful basis for each purpose for processing registration data, a small group (chaired by Thomas Rickert) met and established a procedure (see hereunder) to facilitate the determination of the appropriate lawful basis.

LAWFUL BASIS TEST

1. Briefly describe the processing activity
2. What purpose does it relate to?
3. Is the processing necessary to perform the registration agreement?
 - a. From a technical perspective?
 - b. Based on a lawful ICANN requirement?
4. - If yes, stop here.*
 - if no, continue to 5+
5. Is a legitimate interest pursued? By the controller? By a third party?
 - legitimate interest? To be construed broadly.
 - Is the processing necessary?
 - What are the interests of the data subject?
 - Balance!**
6. Who is responsible for the processing activity?
 - List the parties!

*If “yes” to questions 3(a) and 3(b), the legal basis would be 6(1)(b).

**If the processing is legitimate and passes the balancing test, the legal basis would be 6(1)(f).

A small breakout team met to discuss the lawful basis of processing activities, using the above test. The small team came to the following agreements, though these agreements were not presented, nor agreed to, during a plenary session:

Processing Activity	Responsible Party	Lawful Basis
Collecting registrant data to allocate a string to a registrant (Data Elements Workbook A)	ICANN, registries and registrars as joint controllers	6(1)(b)
Optional collection of data elements for contactability purposes (Data Elements Workbook C)	ICANN, registries and registrars as joint controllers	6(1)(b)
Transmission of data from registrar to registry		6(1)(f)
Collecting specific data for eligibility requirements (Data Elements Workbook N)		6(1)(b) (for registries with

		special eligibility requirements)
		6(1)(f) for registries with no special eligibility requirements
Transmission of registration data to escrow agent (Data Elements Workbook E)	ICANN – sole controller; Registries and Registrars - processors	6(1)(f)
<i>The purposes below were not fully discussed in the small group but follow the methodology above and are included here as a placeholder for completeness</i>		
Require the collection of data to coordinate the development and implementation of policies for resolution of disputes (Data Elements Workbook M)		6(1)(b)
Handle contractual compliance monitoring requests, audits, and complaints submitted (Data Elements Workbook F)		6(1)(f)
Data disclosure to third-parties (Data Elements Workbook B)		6(1)(f)

DRAFT POLICY RECOMMENDATIONS

In the context of the deliberations on the lawful purposes for processing and related questions, the EPDP Team has put forward these preliminary policy recommendations for inclusion in its Initial Report (bracketed recommendations are not fully vetted):

1. Requirements related to the accuracy of registration data under the current ICANN contracts and consensus policies shall not be affected by this policy. (Please refer to [Data Processing Workbook B](#)).
2. ICANN Org should enter into data processing agreements with dispute resolution providers in which the data retention period is addressed, considering the interest in having publicly available decisions. (Please refer to [Data Processing Workbook M](#)).
3. [Identification Data Controllers & Processors or other recommendations made in this report will not affect “No Third-Party Beneficiary” clauses in existing ICANN-Contracted Party agreements.] (Bracketed because it was discussed in small group only.)

PURPOSE & POLICY DISCUSSION:

AGREED NEXT STEPS IN RELATION TO LAWFUL DISCLOSURE OF REGISTRATION DATA TO THIRD PARTIES (Purpose B)

- This is a registry/registrar purpose
- The group has different viewpoints whether this is also an ICANN Purpose – we will analyze that more.
- We agree that we want third parties with legitimate interests to be able to have predictable, lawful access, and the EPDP policy must make that clear. (we didn't define what 'predictable' means).
- We are all going to bring this back to our constituencies.

As a next step, the data elements worksheet for purpose B will be completed from a registry and registrar perspective, following which the EPDP Team will consider the wording and scope of this purpose further.

QUESTIONS / ACTION ITEMS FOR ICANN ORG

The following questions have been referred to ICANN Org for follow up:

1. With respect to ICANN's references to dispute resolution policies within the Temporary Specification, is there a reason only the URS and UDRP were included and not other dispute resolution procedures such as RDDR, PDDR and PICDR?
2. With respect to data retention:
For how long and why, should data escrow agents retain old deposits (if at all) in order to fulfill their contractually-required obligations?
For how long and why, should data be retained by registries and registrars from the perspective of ICANN Org for purpose A (Establish the rights of a Registered Name Holder in a Registered Name and ensuring that the Registered Name Holder may exercise its rights in respect of the Registered Name)?
3. For which ICANN policies is admin / tech contact information currently a required data element and/or referenced in the policy?
4. Apart from ICANN Org Compliance, do any other ICANN departments require access to registration data and, as such, might require a specific purpose? If so, please describe in detail sufficient to provide a legal basis for such data processing.
5. ICANN Org to provide EPDP Team with copy of agreements with UDRP/URS providers in to demonstrate GDPR compliance in relation to data protection / transfer of data including relevant data protection policies that dispute resolution providers have in place.
6. ICANN Compliance to provide completed data elements workbook for purpose F, with specific focus on which data elements are required for compliance functions (for both

audit and complaint handling), as well as how long should registrars/registries retain registration data for the purpose of ICANN Org compliance audits/complaints.

ACTION ITEMS

1. Support team to post relevant documents to the EPDP Team wiki and/or mailing list following the F2F meeting.
2. If required by their group working models, EPDP Team Members to share F2F work products, e.g., draft data processing workbooks, with their respective Stakeholder Groups, Constituencies, Advisory Committees. Final feedback due by Friday, 5 October 2018.
3. Mark Anderson to work with registry colleagues to fill out the draft data elements currently required for registry data escrow in the workbook for Purpose E (registry data escrow). This could also include recommendations for any modifications to be considered to what is currently required. (due date – Tuesday 2 October)
4. Kristina Rosette to provide first draft of data elements workbook for purpose N. (due date – Tuesday 2 October)
5. Benedict Addis to provide writing for additional purpose, “Research” for consideration by the EPDP team. (due date – Tuesday 2 October)
6. Registrar and Registry teams to develop first draft of data elements workbook for purpose B. (due date – Tuesday 2 October)
7. EPDP Leadership Team to propose updated meeting strategy, i.e., timing, content, etc., taking into account feedback received during the F2F sessions.

EXPECTED NEXT STEPS

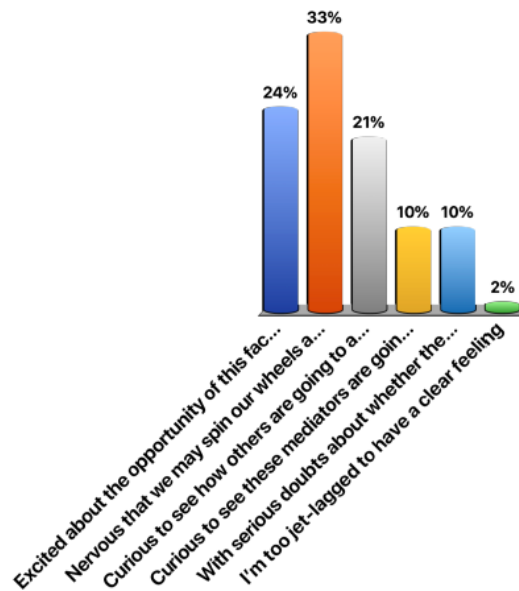
In the time remaining between now and ICANN63 in Barcelona (20-25 October 2018), the EPDP Team will continue its deliberations on the topics outlined above with the objective of:

- developing responses to charter questions for the purposes and collection of data (Charter question set 1&2)
- making recommendations for inclusion in the Initial Report: the purposes for processing registration data, and collection, use and disclosure of data
- reviewing the set of required elements described in the PDP Manual (see [here](#) for further details).
- developing a first draft of this content with the priority focus for ICANN63 being on developing the section that will address responses to the charter questions and related recommendations.

Appendix A – EPDP Team input provided throughout the meeting on a number of questions

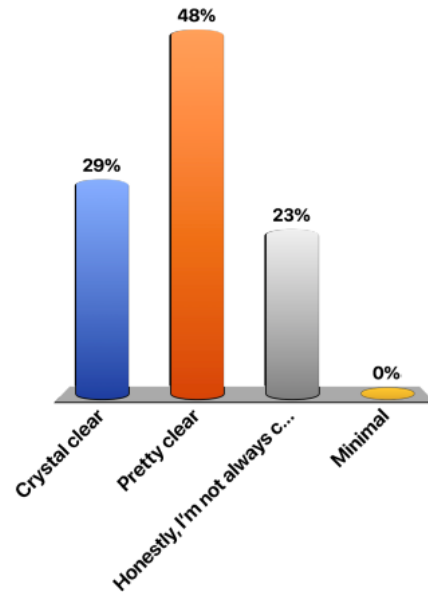
What is your gut telling you about this meeting? (select 2)

- A. Excited about the opportunity of this face to face meeting
- B. Nervous that we may spin our wheels and get little done this week
- C. Curious to see how others are going to act
- D. Curious to see these mediators are going to be helpful
- E. With serious doubts about whether the mediators will be helpful
- F. I'm too jet-lagged to have a clear feeling



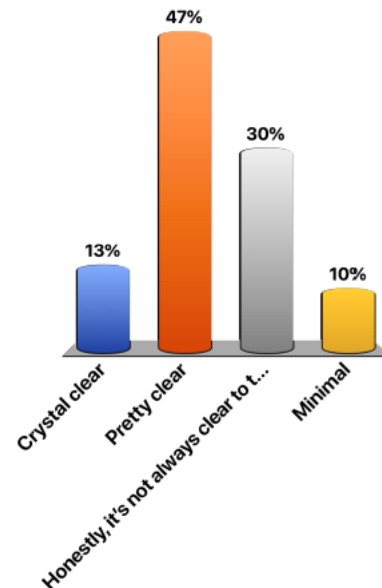
How would I judge my understanding of what's fundamentally important to the other stakeholders at this table?
(i.e., how well do I understand their core interests?)

- A. Crystal clear
- B. Pretty clear
- C. Honestly, I'm not always clear
- D. Minimal



How would I judge other stakeholders' understanding of what's fundamentally important to me?
(i.e., how well do they understand my core interests?)

- A. Crystal clear
- B. Pretty clear
- C. Honestly, it's not always clear to them
- D. Minimal



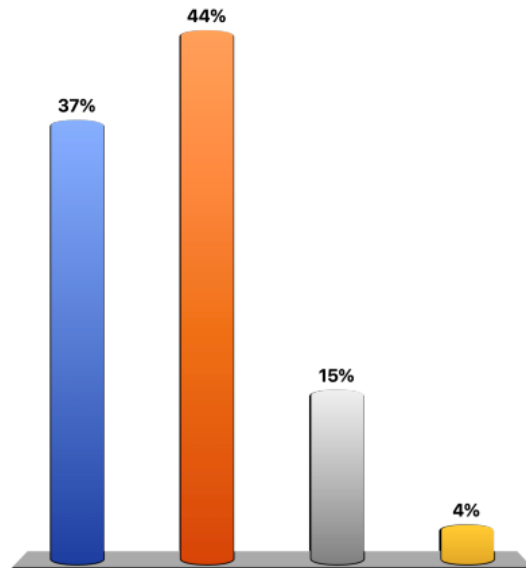
How am I ending the day?

A. 😄

B. 😊

C. 😞

D. 😡

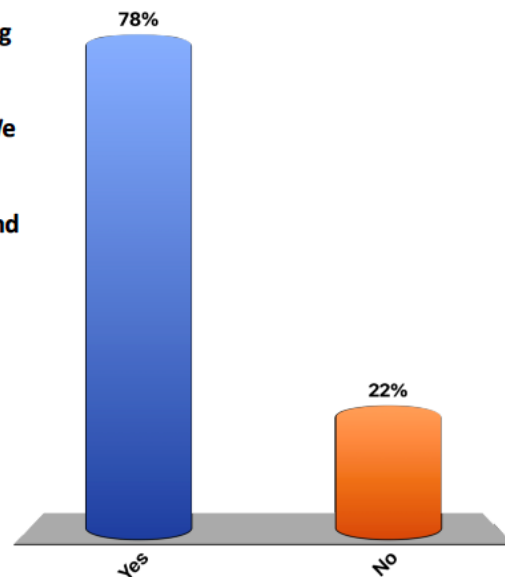


Can I live with the following result from this meeting?

- Registries/registrars have the following purpose: providing for lawful disclosure of registration data to third parties with legitimate interests to data that is already collected
- We don't all agree if ICANN also has the same purpose. We will analyze that more
- We all agree that we want third parties with legitimate interests to be able to have [predictable] lawful access, and the EPDP policy must make that clear.
- We all are going to bring this back to our constituencies

A. Yes

B. No



How would I evaluate this meeting?

- A. Very good
- B. Good
- C. So-so
- D. Terrible

