

# EPDP Team

## Phase 2 Planning Discussion



GNSO Council Meeting  
4 March 2019

# Phase 2 Scope

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- ⦿ Items identified in EPDP Team Charter:
  - System for Standardized Access to Non-Public Registration Data
  - Annex to the Temporary Specification (Important Issues for Further Community Action)
  
- ⦿ Items deferred from EPDP Team phase 1, either requiring further consideration or dependent on input from others

Mind map on next slide reflects charter topics / questions (white) and phase 1 items (yellow) [include link to downloadable version]

**System for Standardized Access to Non-Public Registration Data**  
(note, questions are copied from EDCP Team Charter)

- 4) Purpose for Accessing Data - what are the unprocessed policy questions that will guide implementation?
- 5) Characterizing - What are the unprocessed policy questions that will guide implementation?
- 6) Terms of Access and Compliance with Terms of Use - What are the unprocessed policy questions that will guide implementation?

- 4) Under applicable law, what are legitimate purposes for third parties to access registration data?
  - 4) What legal bases exist to support this access?
  - 4) What are the eligibility criteria for access to non-public Registration data?
  - 4) Do these purposes cover different types of third party requests?
  - 4) What data elements should each userparty have access to based on their purpose?
  - 4) To what extent can we determine a set of data elements and potential scope (including specific third parties and/or purposes)?
  - 4) Have any RDAAP that is technically capable, allow registration/registrars to access accreditation data and purposes for the query? Once accreditation modules are developed by the appropriate authorities and approved by the relevant legal authorities, how can we ensure that RDAAP is technically capable and is ready to access, log and respond to the accredited requester's request?
- Note that Purpose 5 is a placeholder pending further work on the issue of access in Phase 2 of this SPOAP and is expected to be revisited once the Phase 2 work has been completed.

Work on the topic of Standardized Access to Non-Public Registration Data shall begin once getting questions purposes, selection of registration data by regulator, transfer of data from regulator to registry, publication of data by regulator (regulator) have been answered and that is in preparation for the Temporary Specification Final Report. The threshold for selecting "answered" for the getting questions will be consensus of the EDCP Team and non-objection by the SPOAP Council.

Following the EDCP Team's primary focus on confirming, clarifying, refining or rejecting the Temporary Specification, and resolving the getting questions listed above, the EDCP Team will turn its attention to the items included in the Temporary Specification Annex, listed as "Important Issues for Further Community Action." These include but are not limited to the standardized access model referenced above.

**EDCP Team Recommendation #2.**  
In accordance with the EDCP Team Charter and in line with Purpose 4), the EDCP Team undertakes to make a recommendation pertaining to a standardized model for lawful disclosure of non-public Registration Data preferred to in the Charter as "Standardized Access", now that the getting questions in the charter have been answered. This will include addressing questions such as:

- Whether such a system should be adopted
- What are the legitimate purposes for third parties to access registration data?
- What are the eligibility criteria for access to non-public Registration data?
- Do these purposes cover different types of third party requests?
- What data elements should each userparty have access to?

In this context, the EDCP Team will consider amongst other issues, disclosure in the course of intellectual property infringement and DNS abuse cases. There is a need to confirm that disclosure for legitimate purposes is not incompatible with the purposes for which such data has been collected.

- 1) Proceed to Section 4.4, continuing community work to develop an accreditation and access model that complies with GDPR, while recognizing the need to obtain additional guidance from Article 29 Working Party/European Data Protection Board;
- 2) Addressing the feasibility of requiring website contacts to have a uniform anonymized email address as one domain name registration at a given Registrar, while meeting security, stability and meeting the requirements of Section 2.5.1 of Appendix A;
- 3) Developing methods to provide potential LRSP and GDPR compliance with sufficient access to Registration Data to support good-faith filings of complaints;
- 4) Consistent process for continued access to Registration Data, including non-public data, for users with a legitimate purpose, until the time when a final accreditation and access model is fully operational, in a mandatory basis for all such relevant parties;
- 5) Distinguishing between legal and natural persons to allow for public access to the Registration Data of legal persons, which are not in the remit of the GDPR;
- 6) Limitations in terms of query volume envisaged under an accreditation program balanced against needs investigatory case-referencing needs;
- 7) Confidentiality of queries for Registration Data by law enforcement authorities;

The EDCP Team requests that when the EDCP Team contributes its deliberations on a standardized access framework, a representative of the ICANN PDP WG shall provide an update on the current status of deliberations so that the EDCP Team may determine if/when the WG's recommendations may affect on implementation of the LRSP and GDPR in the context of the standardized access framework's distribution.

**EDCP Team Recommendation #1.**

- 1) The EDCP Team recommends that Registrars and Registry Operators are permitted to differentiate between registration of legal and natural persons, but are not obligated to do so.
- 2) The EDCP Team recommends that as soon as possible ICANN Org undertake a study, for which the terms of reference are developed in consultation with the community, that considers:
  - The feasibility and costs including both implementation and public safety costs of differentiating between legal and natural persons
  - Examples of industries or other organizations that have successfully differentiated between legal and natural persons
  - Privacy risks to registrars/natural holders of differentiating between legal and natural persons, and other potential risks of any to registrars and registries if not differentiated.
- 3) The EDCP Team will determine and resolve the Legal vs. Natural Issue in Phase 2.

**Phase 2: (1) System for Standardized Access to Non-Public Registration Data, (2) Annex - Important Issues for Community Consideration and (3) Issues derived from EDCP Phase 1**

**Annex: Important Issues for Further Community Action**

**Issues Deferred from EDCP Phase 1**

- EDCP Team Recommendation #2.**  
The EDCP Team commits to considering in Phase 2 of its work whether additional purposes should be considered to facilitate ICANN's Office of the Chief Technology Officer (CTO) to carry out its mission (see [https://www.icann.org/en/about/mission-statement](#)). This consideration should be informed by legal guidance on those provisions in the GDPR concerning research apply to ICANN Org and the expression for the need of such pseudonymized data by ICANN.
- EDCP Team Recommendation #1c.**  
In the case of a domain name registration where an "affiliated" privacy/proxy service used (e.g. where data associated with a natural person is masked), Registrar (and Registry where applicable) MUST include in the public RDOs and return in response to any query full non-personal RDOs of the privacy/proxy service, which MUST also include the existing privacy/proxy pseudonymized email.
- EDCP Team Recommendation #1d.**  
Now, PPSAI is an approved policy that is currently going through implementation. It will be important to understand the interplay between the display of information of affiliated vs. accredited privacy / proxy providers. Based on feedback received on the topic from the PPSAI IRT, the EDCP Team may consider the further in Phase 2.
- EDCP Team Recommendation #1e.**  
1. In order to inform to Phase 2 deliberations, the EDCP Team recommends that ICANN Org, as a matter of urgency, undertake a review of all of the above processes and procedures so as to identify and document the instances in which personal data is requested from a registrar beyond the period of the life of the registration. Retention periods for specific data elements should then be identified, documented, and relayed upon to establish the required relevant and specific retention-to-date expectations for registrars. The EDCP Team recommends community members be invited to contribute to this data gathering exercise by providing input on other legitimate purposes for which different retention periods may be applicable.  
2. In the interim, the EDCP Team has recognized that the Transfer Dispute Resolution Policy (TDRP) has been identified as having the longest justified retention period of one year and has therefore recommended registrars be required to retain only those data elements deemed necessary for the purposes of the TDRP, for a period of three months following the life of the registration or three months to implement the decision, "if in doubt. The retention is grounded on the static policy stipulation within the TDRP that same under the policy may only be relied for a period of 12 months after the alleged breach (PNC see TDRP section 2.2) of the Transfer Policy (PNC see Section 1.16 of TDRP). This retention period does not matter in policy of registrar and registrars to retain data elements provided in Recommendations 4-7 for other purposes specified in Recommendation 1 for shorter periods (Phase 2, the EDCP Team will work on identifying different retention periods for any other process, including the process identified in the Report.)"
- EDCP Team Recommendation #1f.**  
The EDCP Team recommends that retention should be applied as follows to this data element: City - Redacted  
The EDCP Team expects to receive further legal advice on this topic which it will analyze in phase 2 of its work to determine whether or not this recommendation should be modified.

Dependent on legal guidance and expression of need

Dependent on feedback received from PPSAI

Dependent on ICANN Org undertaking a review of all its active processes and procedures so as to identify and document the instances in which personal data is requested beyond the life of registration.

Dependent on further legal advice

# Items for GNSO Council consideration

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- Starting point – a presumption that the Council will retain (i.e., not reconsider and amend) the current Charter:
  - To maintain the momentum and current membership of the team
  - Given the relatively clear scope described in the accompanying chart
  - To not delay work
  - That the Council and EPDP Team can interact through the process to make adjustments as required
  
- Timing: the Council might consider a deadline for completing the work, given the apparent beneficial effect of a timeline in Phase 1
  - A deadline should be considered after the Team creates a comprehensive work plan and schedule
  - Time be provided for EDPB review as well as public comment
  
- Consider items for EPDP Team input to the Council, e.g.
  - Aspects of the charter that might limit the EPDP Team's ability to carry out its objectives?
  - Schedule, pace of work, working methods
  - Resources, beyond the standard support, that might be required

# Expression of Interest for EPDP Team Chair

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- ⦿ EOI, based on charter requirements circulated last week
- ⦿ Deadline for responses: [include date]
- ⦿ Council leadership with assistance of SSC leadership to review applications and recommend chair to GNSO Council for consideration
- ⦿ In the interim, outgoing chair has confirmed willingness to continue until such time new chair has been appointed. In addition, Council liaison / vice-chair has also indicated willingness to step in as needed.
- ⦿ Objective is to confirm new Chair at the latest by 18 April Council meeting.



# Proposed EPDP Discussions in Kobe

EPDP  
Team

**Saturday – 11.00 – 18.30**

Recap of status, Council discussions  
Brainstorming session to phase 2  
approach, work plan, working  
methods, identification of possible  
resources needed, schedule going.  
Phase 1 Implementation Planning  
Update (GDD)

EPDP  
Team

**Wednesday – 10.30 – 12.00**

Engagement session with Technical  
Study Group.  
Opportunity to learn more about the  
scope, status and next steps of the  
TSG and how it intersects with the  
EPDP Team's phase 2 deliberations

Council

**Sunday – 11.45 – 12.15**

Council continued discussions on  
phase 2 planning

Council

**Wednesday – 13.00 – 15.00**

Council meeting – opportunity for  
further phase 2 planning and/or  
review feedback from EPDP Team?

Impl?

**Sunday – 17.00 – 18.30**

Possible slot to be used for informal  
phase 1 IRT discussion

EPDP  
Team

**Thursday – 8.30 – 10.15**

Review of draft work plan and  
approach coming out of Saturday's  
session plus further input that may  
have been gathered throughout the  
week, including Council input from  
weekend sessions