ICANN | 64
COMMUNITY FORUM

KOBE
9–14 March 2019

EPDP Team Meeting

Day 4

ICANN64, Kobe

14 March 2019

Welcome & Introductions

Agenda item #1

Welcome & Introductions

◉ Roll Call & Introductions

◉ Recap of discussions this week

  ○ Further Council deliberations, incl. discussions with ICANN Board and GAC

  ○ Engagement session with TSG

  ○ Any further input EPDP Team members want to share?

  ○ Review of agenda for today's meeting:

Day 4—Thursday 14 March 2019

Timing	Topic
8.30 – 10.15	Wrap up session • Review of draft work plan and approach coming out of Saturday's session • Consider further input that may have been gathered throughout the week, including Council input from weekend sessions as well as engagement session with TSG • Confirm next steps and next meeting

Proposed Preliminary Agreements

Working Methods

Proposed Working Methods

- Restart meetings as soon as possible after new chair appointment (no later than 1 week after confirmation so no later than 25 April 2019)

- Commence with weekly meetings of 90 minutes (Thursday's at 14.00 UTC) but with the objective to increase this with either another weekly plenary session that would focus on a different stream of work or small team(s) meetings, as soon as possible

- Allow alternates to join the main AC room, but require login preceded by zzz. which would ensure that alternates are easily identifiable and separated from members. Alternates will NOT be allowed to participate in the chat and/or any other AC features. Any violation of those rules will result in expulsion. Similarly, alternates will have posting rights on the mailing list, but will only be allowed to post when replacing a member. Violation of this rule will result in downgrading to observer status. On the wiki, a list would be maintained that shows who are serving as main reps.

Proposed Preliminary Agreements

Dependencies / interactions

Proposed Next Steps

- Review updated mind map.

- Staff support team to further develop the mind map, identifying dependencies and possible timing to inform a draft work plan / timeline

Phase II: 1) System for Standardized Access to Non-Public Registration Data, 2) Annex - Important Issues for Community Consideration and 3) Issues deferred from EPDP Phase I

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

1 Pursuant 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.

> Is this topic captured by the overarching topic of the System for Standardized Access to Non-Public Registration Data?

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 mechanism is fully operational, or a mandatory basis for all contracted parties.

> Is this topic addressed through the implementation of recommendation #15 of the Final Report of phase 1?

a) Purposes for Accessing Data, what are the unanswered policy questions that will guide implementation?

a1) Under applicable law, what are legitimate purposes for third parties to access registration data?

a2) What legal bases exist to support this access?

a3) What are the eligibility criteria for access to non-public Registration data?

3 Developing methods to provide potential URS and UDRP complainants with sufficient access to Registration Data to support good faith filings of complaints.

> The EPDP Team requests that when the EPDP Team commences its deliberation on a standardized access framework, a representative of the RPMs PDP WG shall provide an update on the current status of deliberations so that the EPDP Team may determine if/how the WG's recommendations may affect consideration of the URS and UDRP in the context of the standardized access framework deliberations.

a4) Do these parties/groups consist of different types of third party requestors?

a5) What data elements should each user/party have access to based on their purpose?

a6) To what extent can we determine a set of data elements and potential scope (volume) for specific third parties and/or purposes?

a7) How can RDAP, that is technically capable, allow Registrars/Registries to accept accreditation scheme and purpose for the query? Once accreditation models are developed by the appropriate accreditors and approved by the relevant legal authorities, how can we ensure that RDAP is technically capable and is ready to accept, log and respond to the accredited requestor's token?

Note that Purpose 2 is a placeholder pending further work on the issue of access in Phase 2 of this EPDP and is expected to be revisited once this Phase 2 work has been completed.

b) Credentialing - What are the unanswered policy questions that will guide implementation?

b1) How will credentials be granted and managed?

b2) Who is responsible for providing credentials?

b3) How will these credentials be integrated into registrar/registrar technical systems?

c) Terms of access and compliance with terms of use - What are the unanswered policy questions that will guide implementation?

c1) What rules/policies will govern users' access to the data?

6 Limitations in terms of query volume envisaged under an accreditation program balanced against realistic investigatory cross-referencing needs.

c2) What rules/policies will govern users' use of the data once accessed?

c3) Who will be responsible for establishing and enforcing these rules/policies?

c4) What, if any, sanctions or penalties will a user face for abusing the data, including future restrictions on access or compensation to data subjects whose data has been abused in addition to any sanctions already provided in applicable law?

c5) What kinds of insights will Contracted Parties have into what data is accessed and how it is used?

c6) What rights do data subjects have in ascertaining when and how their data is accessed and used?

c7) How can a third party access model accommodate differing requirements for data subject notification of data disclosure?

7 Confidentiality of queries to Registration Data by law enforcement authorities.

EPDP Team Recommendation #5.
In accordance with the EPDP Team Charter and in line with Purpose #2, the EPDP Team undertakes to make a recommendation pertaining to a standardized model for lawful disclosure of non-public Registration Data (referred to in the Charter as 'standardized access') now that the gating 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 parties/groups consist of different types of third-party requestors?
- What data elements should each user/party have access to?

In this context, the EPDP 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.

Annex: Important Issues for Further Community Action

Feasibility of unique contacts to have uniform anonymized email address:
2 Addressing the feasibility of requiring unique contacts to have a uniform anonymized email address across domain name registrations at a given Registrar, while ensuring security/stability and meeting the requirements of Section 2.5.1 of Appendix A.

EPDP Team Recommendation #17.
1) The EPDP Team recommends that Registrars and Registry Operators are permitted to differentiate between registrations of legal and natural persons, but are not obligated to do so.
2) The EPDP Team recommends that as soon as possible ICANN Org undertakes a study, for which the terms of reference are developed in consultation with the community, that considers:
- The feasibility and scale including both implementation and potential liability 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 registered name holders of differentiating between legal and natural persons; and
- Other potential risks (if any) to registrars and registries of not differentiating.
3) The EPDP Team will determine and resolve the Legal vs. Natural issue in Phase 2.

Legal vs. Natural
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.

Issues Deferred from EPDP Phase I

Additional purpose for ICANN's OCTO
EPDP Team Recommendation #2.
The EPDP 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 (OCTO) to carry out its mission (see Mission Statement website). This consideration should be informed by legal guidance on if/how provisions in the GDPR concerning research apply to ICANN Org and the expression for the need of such pseudonymized data by ICANN.

> Dependent on legal guidance and expression of need by ICANN

Display of information of affiliated vs. accredited privacy / proxy providers
EPDP Team Recommendation #14.
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 RDDS and return in response to any query full non-personal RDDS data of the privacy/proxy service, which MAY also include the existing privacy/proxy pseudonymized email.

Note, 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 this topic from the PPSAI IRT, the EPDP Team may consider this further in phase 2.

> Dependent on feedback received from PPSAI

Data Retention
EPDP Team Recommendation #16.
1. In order to inform its Phase 2 deliberations, the EPDP team recommends that ICANN Org, as a matter of urgency, undertakes a review of all of its active 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 relied upon to establish the required element and specific minimum data retention expectations for registrars. The EPDP 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 EPDP team have 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 fifteen months following the life of the registration plus three months to implement the deletion, i.e. 18 months. This retention is grounded on the stated policy obligation within the TDRP that claims under the policy may only be raised for a period of 12 months after the alleged breach (PR: see TDRP section 2.2) of the Transfer Policy (PR: see Section 1.15 of TDRP). This retention period does not restrict the ability of registries and registrars to retain data elements provided in Recommendations 6-7 for other purposes specified in Recommendation 1 for shorter periods, (minus in Pass.), to EPDP would work on codifying different retention points to any other purpose, including the purposes identified in this report.

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

City Redaction Field
EPDP Team Recommendation #11.
The EPDP Team recommends that redaction must be applied as follows to this data element:
City - Redacted
The EPDP 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 further legal advice

Review legal guidance provided in phase 1
- Territorial Scope
- Legal Basis (6.1b)
- Technical Contact
- Whois Accuracy

Proposed Preliminary Agreements

Resources

Resources – Proposed approach

- ⊙ Immediately request GNSO Council to request:
  - ○ Continuation of legal support at the same level as for phase 1
  - ○ Continuation of recordings & transcripts
  - ○ Request mediators to facilitate F2F sessions at ICANN65

- ⊙ Make clear that additional requests for resources are likely forthcoming, but need to be informed by the work plan and timeline.

- ⊙ Encourage EPDP Team members to work through their respective groups to secure travel support for ICANN65 and/or identify alternates that will be in attendance

Workplan Brainstorming

ICANN

Questions for discussion

- Factoring in discussions here this week, how should EPDP Team tackle the System for Standardized Access to Non-Public Registration Data? Are there any dependencies that need to be factored in?

- Are there any topics that should be prioritized?

- What next steps should be taken in relation to the dependencies identified?

- What should be the next steps in relation to the legal guidance that has been provided to date?

- What is a target date for publication of the Initial Report that the EPDP Team is aiming to work towards?