

Expedited Policy Development Process on the Temporary Specification for gTLD Registration Data



Presentation at the WSIS Forum, Geneva, 11 April 2019

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EPDP Background & Approach

Keith Drazek – Generic Names Supporting Organisation (GNSO) Chair

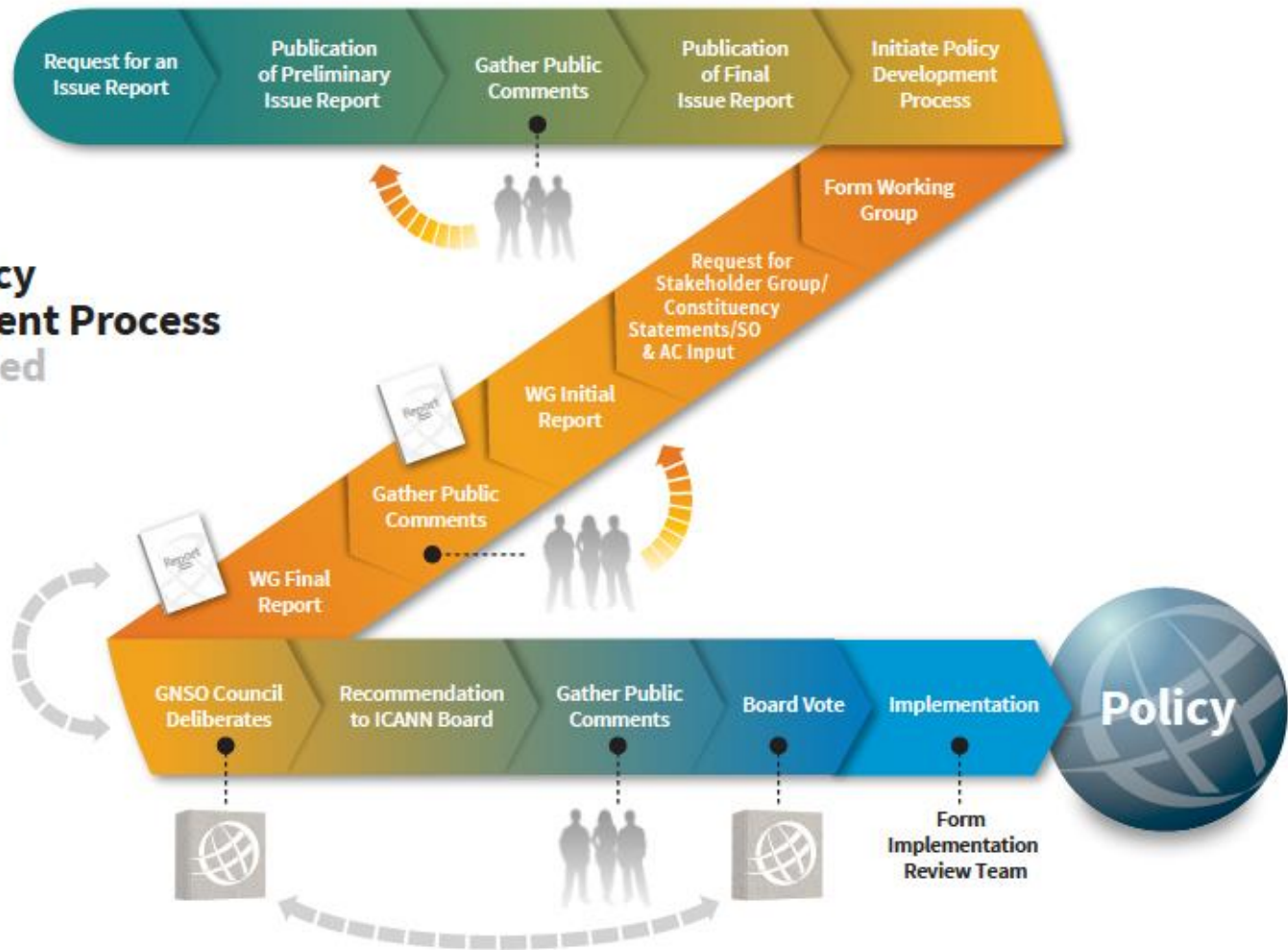
Background

- ICANN Board adopted the Temporary Specification for gTLD Registration Data on 17 May 2018, with an effective date of 25 May 2018.
- The adoption of the Temporary Specification triggered an obligation on the GNSO Council to undertake a policy development process to confirm, or not, the Temporary Specification as Consensus Policy.
- Given the time constraints the GNSO Council agreed that the Expedited Policy Development Process (EPDP) provided the best opportunity to meet the goal. Note that “expedited” in this context means that some of the initial phases (Issue Scoping) of the PDP are not required for issues that have already been defined and scoped (in this case, through the Temporary Specification)
- Further constraints in timing were the result of external factors as the policy development process triggered by the adoption of a Temporary Specification needs to be completed within a year, as the Temporary Specification cannot be renewed after that.
- Council also applied some other improvements such as representative participation and selection / appointment by the Council of the chair to ensure the best possible basis to complete this work in the time available.


GNSO Policy Development Process

GNSO Policy Development Process *Summarized


*Some steps omitted, for brevity.




What is the EPDP's mission and scope?



Initiated by GNSO,
triggered by ICANN
Board's adoption of
Temporary Specification

- 
- To confirm, or not, the Temp Spec as Consensus Policy by 25 May 2019
 - Develop Policy Recs and answer 52 Charter Questions



Discuss a standardized access model to nonpublic registration data

- Only after the “gating questions” specified in the [EPDP Team's Charter](#) are addressed



Only covers topics in the
Temp Spec

ICANN's Expedited Policy Development for Processing of Registration Data (Phase 1)

Kurt Pritz – Expedited PDP working group Phase 1 Chair

Setting the Stage

GDPR was set to take full effect on 25 May 2018

Current ICANN agreements are not GDPR compliant – particularly in relation to the publication of registration data (“Whois data”)

ICANN passed a “Temporary Specification” to create a GDPR-compliant contract specification for the handling of registration data just prior to 25 May 2018

Temporary Specifications and Policies are effective for only one year in order to safeguard the multi-stakeholder, bottom-up internet governance model

A permanent solution is sought because:

- third parties are accustomed to data access to combat trademark infringement, finding registrants for business reasons, and other legitimate purposes
- contracted parties want a consistent approach and a “level playing field”

Therefore, a permanent solution must be in place by 25 May 2019

What is an “E”PDP?

An Expedited Policy Development Process is, in all respects, the same as a traditional ICANN Policy Development except that...

...the introductory work (e.g., creation of an Issues Report) necessary to initiate the PDP is eliminated.

All other safeguards of the bottom-up methodology are retained:


- Two public comment periods lasting (cumulatively) 70 days
- Published public comment analysis and review
- Formal Initial and Final Reports
- Full community participation by stakeholder group
- Formal Consensus calls to ascertain support
- Publicly conducted, transparent meetings and mailing lists

In the 5 months available to it, the EPDP Team held:

- 47 fully-attended, multi-hour meetings
- 50+ hours of face-to-face meetings in Barcelona and in Los Angeles
- many small team and committee meetings









EPDP Team Composition

Chair




1 Chair


GNSO

<u>RySG</u>	<u>RrSG</u>	<u>CSG</u>	<u>NCSG</u>
 3 Members	 3 Members	 6 Members	 6 Members
 3 Alternates	 3 Alternates	 3 Alternates	 3 Alternates
		2 members + 1 alternate per constituency	

ALAC




2 Members



2 Alternates

SSAC




2 Members




2 Alternates

GAC




3 Members




3 Alternates


Liaisons



2 ICANN Staff Liaisons
(Legal & GDD)



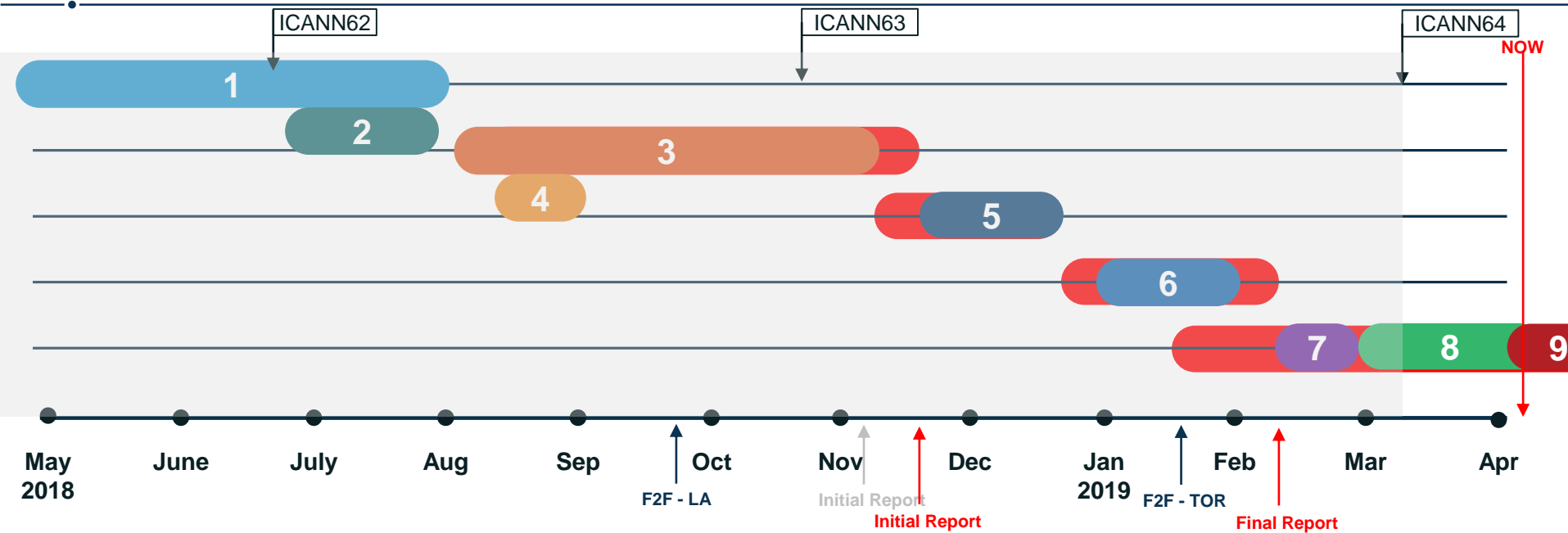
2 ICANN Board Liaisons



1 GNSO
Council Liaison

EPDP Timeline

3 April 2019



- 1** Prep work, incl. EPDP Initiation Request & Charter adoption
- 4** Input from SO/ACs & SG/Cs
- 7** Council consideration of Final Report (1)

- 2** Formation of EPDP Team
- 5** Public Comment on Initial Report
- 8** Public Comment prior to Board consideration

- 3** EPDP Team Deliberation & Publication of Initial Report
- 6** Review of Public Comment & Submission of Final Report
- 9** Board consideration

00 Days to Final Report

47 Days to Temp Spec Expiration

Legitimate, Lawful Purposes for Processing Data

EPDP Team Questions

- Are the purposes in Temporary Specification legitimate?
- Do those purposes have a GDPR-defined legal basis?
- Should any of the purposes be eliminated or amended?
- Should any purposes be added?

EPDP Team Approach

- Reviewed Temporary Specification Purposes
- Factored in GDPR requirements and EDPB Advice
- Developed new / revised purposes and identified corresponding legal basis for each

&

Lawful Basis - as defined in GDPR

Each Purpose for processing personal data and each data processing step (e.g., collection, use, disclosure) requires a GDPR legal basis.

- ⦿ Art. 6.1(a): Consent - the data subject has given consent to the processing of his or her personal data for one or more specific purposes.
- ⦿ Art. 6.1(b): Necessary for the performance of a contract - to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract.
- ⦿ Art. 6.1(f): Processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, and not overridden by the fundamental rights of the data subject

Purposes for Processing Registration Data (abbr.)

A

Establish rights of Registered Name Holder

E

ICANN contractual compliance

B

Enabling lawful access for legitimate third-party interests.

F

Implement ICANN dispute & consensus policies (e.g., URS, UDRP, transfer)

C

Enable communication or notification to the Registered Name Holder

G

Validation of Registered Name Holder gTLD registration policy eligibility criteria.

D

Safeguarding Registered Name Holders' Registration (Data Escrow)

(H)

(Research by ICANN's Technology Office)

Data Processing Activities

Data Processing Activities

- **Collection** by registrar
- **Transfer** from:
 - registrar to registry
 - registrar/registry to data escrow provider
 - registrar/registry to ICANN
 - registry to EBERO
- **Publication / Redaction** by registry/registrar
- **Data Retention**

EPDP Team Approach

For each purpose the EPDP Team determined the related:

- processing activities
- lawful basis and
- data elements required

&

Some Policy Conclusions

In addition to identifying Purposes for Processing Registration Data that are legitimate, lawful and have a sound policy basis, 28 other Policy Recommendations were approved, among them:

- ⦿ a recommendation pertaining to the development of a standardised model for lawful disclosure of non-public Registration Data in Phase 2
- ⦿ that ICANN negotiates and enters into required data protection agreements, as appropriate, with the Contracted Parties
- ⦿ that ICANN enters into legally-compliant data protection agreements with the data escrow, dispute resolution, and Emergency Back-End Registry Operator providers
- ⦿ That ICANN and the GNSO examine existing policies for GDPR compliance

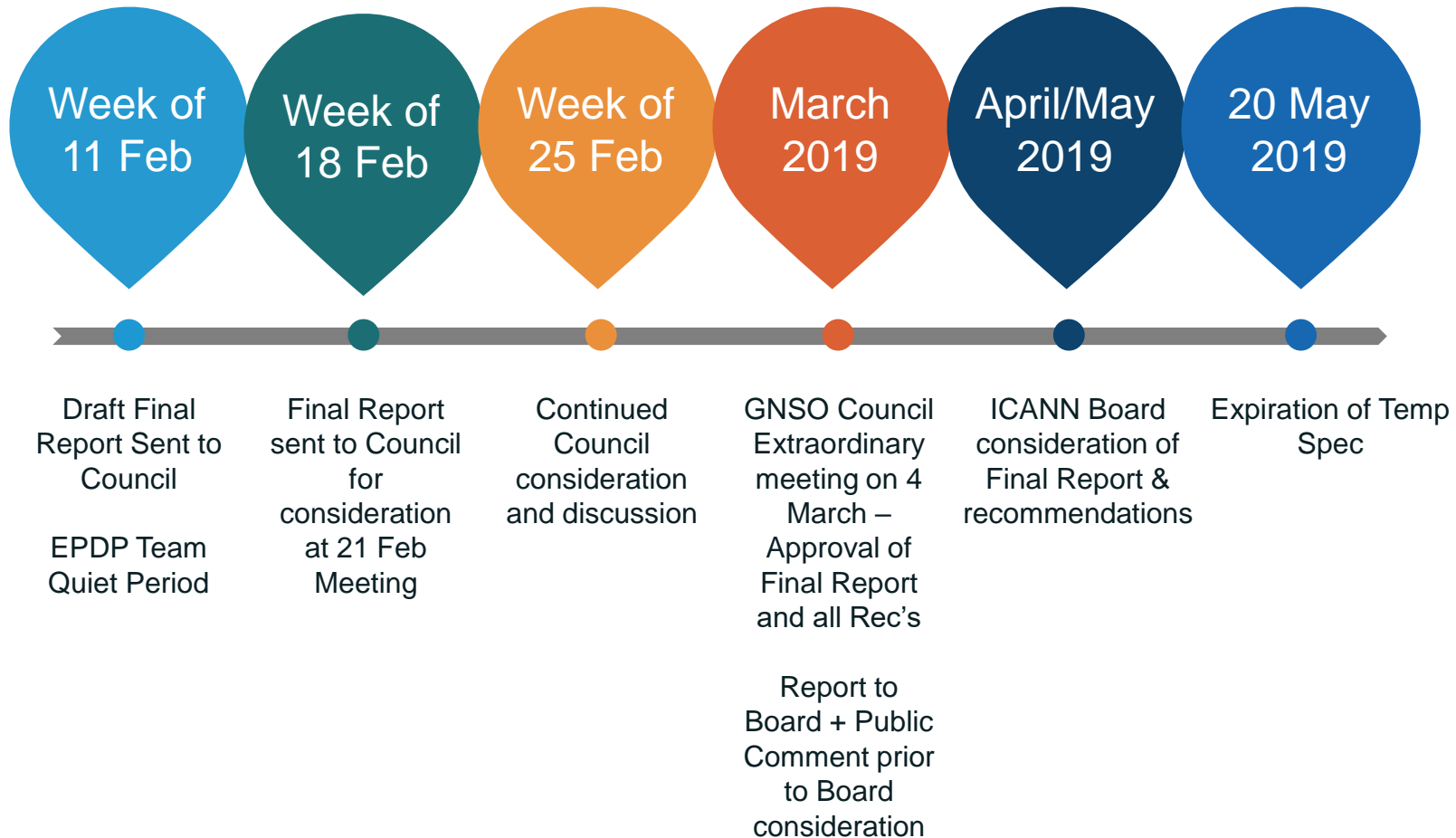
EPDP Innovations / Tools / Lessons Learned

1. Use of professional mediation and mediation techniques
2. Value of face-to-face meetings
3. Use of small teams to tackle contentious issues
4. Transparency for observers
5. Independent legal advice
6. Targeted comment gathering

Next Steps, Phase 1

- ⦿ The public comment period on the GNSO-adopted Final Report will close on 17 April 2019
- ⦿ The ICANN Board will consider the Final Report of adoption as Consensus Policy some time prior to 25 May 2019
- ⦿ An ICANN Implementation Review Team (IRT) will develop operational and contractual detail necessary to implement the approved policies. All work to be complete by 29 Feb 2020.
- ⦿ In the interim between the 25 May expiration of the Temporary Specification and the completion of the IRT work, contracted parties will have the option of complying with the Temporary Specification or the new Consensus Policy.

Recent Developments & Next Steps



Key Deliverables

- 1) The Triage Report, documenting the level of agreement within the EPDP Team on specific provisions in the Temporary Specification (30 Sept 2018) <https://community.icann.org/x/jxBpBQ>
- 2) EPDP Initial Report on gTLD Registration Data (21 Nov 2018): <https://gnso.icann.org/sites/default/files/file/field-file-attach/epdp-gtld-registration-data-specs-initial-21nov18-en.pdf>
- 3) Public Comment Reporting (14 Jan 2019): <https://www.icann.org/en/system/files/files/report-comments-epdp-gtld-registration-data-specs-initial-14jan19-en.pdf>
- 4) EPDP Final Report on gTLD Registration Data (21 Feb 2019): <https://gnso.icann.org/sites/default/files/file/field-file-attach/epdp-gtld-registration-data-specs-final-20feb19-en.pdf>

EPDP Team Phase 2

Olivier Crépin-Leblond

Phase 2 Scope

- ⦿ 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 (blue and white) and phase 1 items (yellow)

From the EPDP Team Charter in relation to Systems for Standardized Access to Non-Public Registration Data

From the EPDP Team Charter in relation to the Temporary Specification Annex

Issues deferred from the EPDP Team Final Report for Phase 1

Systems for Standardized Access to Non-Public Registration Data (Public Questions are taken from EPDP Team Charter)

- 1 Pursued in Section 4.4, verifying community work to create an accreditation and access model that complies with GDPR, while recognizing the need to draw additional guidance from Article 20 Working Party Purpose Data Protection Board.
- 4 Continued process for contract access to Registration Data, including non-public data, for users with a legitimate purpose, with the time when a final accreditation and access mechanism is fully operational, or a mandatory basis for all contracted parties.

- 5 BSA topic captured by the remaining work on the System for Standardized Access to Non-Public Registration Data?
- 6 In this topic, addressed through: The implementation of Recommendation #10 of the Final Report of phase 1?

The EPDP Team requests that when the EPDP Team commences its deliberations on a standardized access framework, a representative of the WPA's PDP WG shall provide an update on the current status of deliberations so that the EPDP Team may determine where the WG's recommendations may affect consideration of the LDP and LDPF in the context of the standardized access framework, deliberations.

- 8) Responses for Accessing Data - what are the commercial policy questions that all public implementation?
- 9) Understanding - What are the commercial policy questions that all public implementation?
- 10) Terms of access and compliance with terms of use - What are the commercial policy questions that all public implementation?

- 11) Under applicable law, what are legitimate purposes for third parties to access registration data?
- 12) What legal bases exist to support this access?
- 13) What are the eligibility criteria for access to non-public Registration Data?
- 14) Do these purposes encompass a range of different types of third-party requesters?
- 15) What data elements should such third-party have access to based on this purpose?
- 16) To what extent can we determine a set of data elements and potential scope (purposes) for specific third parties under purpose?
- 17) How can RCPAP that is technically capable, allow Registrars/Registries to accept accreditation (where and how) for the specific? Once accreditation criteria are developed by the appropriate accreditation and approved by the relevant legal authorities, how can we ensure that RCPAP is technically capable and is ready to accept, log and report to the accredited requestor's intent?
- 18) How will credentials be generated and managed?
- 19) Who is responsible for providing credentials?
- 20) How will these credentials be integrated into registration/registry technical systems?

3 Developing methods to provide potential LDP and LDPF compliance with sufficient access to Registration Data to support good faith, single of compliance.

- 21) What considerations will govern user access to the data?
- 22) What considerations will govern user use of the data post-access?
- 23) Who will be responsible for maintaining and enforcing these considerations?
- 24) What, if any, sanctions or penalties will be considered for allowing the data, including future conditions on access or compensation to data subjects whose data has been shared in addition to any penalties already provided in applicable law?
- 25) What risks of misuse will Contracted Parties face once what data is accessed and how is used?
- 26) What rights to data erasure/loss in accessing, when and how their data is accessed and used?
- 27) How can a third party access model address other requirements for data subject notification (where relevant)?

- 8) Considerations in terms of query volume managed under an accreditation program balanced against needs in regulatory compliance-related needs.
- 7 Confidentiality of queries for Registration Data to law enforcement authorities.

EPDP Team Recommendation #10
 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") over that the guiding questions in the charter have been answered. This will include addressing questions such as:

- 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 encompass a range of different types of third-party requesters?
- What data elements should such requesters have access to?

In this context, the EPDP Team will consider amongst other issues, disclosure in the course of intellectual property litigation and cross-border 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.

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

Assess Important Issues for Further Community Action

Feasibility of using contracts to have private consented and address the feasibility of requiring unique contracts to have sufficient consent and address access domain name registration at a given Registrar, while ensuring accountability and meeting the requirements of Section 2.8.1 of Appendix A.

Legal or National
 8 Distinguishing between legal and national persons to allow for public access to the Registration Data of legal persons, which are not in the remit of the GDPR.

EPDP Team Recommendation #10
 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 undertake a study for which the terms of reference are developed in consultation with the community, that considers:
 • The feasibility and costs involved with implementation and public the ability needs of differentiating between legal and natural persons.
 • The nature of activities of other registrars that have necessarily differentiated between legal and natural persons.
 • Primary needs to register all name holders of differentiating between legal and natural persons, and
 • Other potential risks of not registering and legal and natural persons.
 3) The EPDP Team will determine and resolve the legal vs. National issue in Phase 2.

Additional purposes for ICANN's OCTO
EPDP Team Recommendation #12
 The EPDP Team commits to contributing in Phase 2 of its work what other additional purposes should be considered to facilitate ICANN's Office of the Chief Technology Officer (OCTO) to carry out its mission (<https://www.icann.org/en/about/organization/cto>). This consideration should be informed by legal guidance or other sources in the GDPR concerning research apply to ICANN Org and the appropriate for the need of such pseudonymized data by ICANN.

Dependent on legal guidance and expression of need by ICANN

Display of information of all data vs. accredited privacy / privacy providers
EPDP Team Recommendation #14
 In the case of a domain name registration where an "accredited" privacy provider is used (eg. where data associated with a natural person is masked), Registrars and Registry where applicable MUST include in the public RDDS and submit in response to any query for non-public RDDS data of the privacy provider, WHAT MAY also include the name of the privacy provider (pseudonymized where appropriate).
 Note: PPRM is an approved policy that is currently going through implementation. It will be important to understand the timing between the display of information of all data vs. accredited privacy / privacy providers. Based on feedback received on this topic from the PPRM, the EPDP Team may consider the matter in Phase 2.

Dependent on feedback received from PPRM

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 ongoing operation as a subset of all of its active processes and procedures as to identify and document the information which personal data is requested from a registrar beyond the period of the life of the registration. Retention periods for specific data elements should be identified, documented, and what steps to establish the required consent and specific retention 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 identity parties may be applicable.
 2. In the interim, the EPDP 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 data elements deemed necessary for the purposes of the TDRP for a period of three months following the life of the registration (six months to implement the deadline, i.e. 18 months). This retention is provided in the stated policy objectives within the TDRP that states under the policy may only be used for a period of 12 months after the alleged breach (PDP see TDRP section 2.2) of the Transfer Policy (PDP see Section 1.12 of TDRP). This retention period does not restrict the ability of registrars and registration data elements provided in Recommendations 4-7 for other purposes specified in Recommendation 1 for shorter periods, unless a Name is the EPDP Team work on identifying short-term retention periods in other policies relating the process outlined in the topic 1.1.

Dependent on ICANN Org understanding a subset of all of its active processes and procedures as to identify and document the information which personal data is requested beyond the life of registration

City Resolution Panel
EPDP Team Recommendation #17
 The EPDP Team recommends that resolution must be applied as follows to this data element:
 City - Resolved
 The EPDP Team requests to receive further legal advice on this topic which will inform analysis in phase 2 of its work to determine whether or not this recommendation should be modified.

Dependent on further legal advice

- Territorial Scope
- Legal Basis (R to)
- Territorial Conflict
- White Boundary

Review legal guidance provided in phase 1

Focus on a few MindMap areas



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

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

a4) Do those 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 of parties and/or purposes)?

a7) How can RDAP, that is technically capable, allow Registries/Registrars to accept access for the query? Once accreditation models are developed by the appropriate accreditation approved by the relevant legal authorities, how can we ensure that RDAP is technically capable 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 the 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 registrars'/registries' 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 access against realistic investment

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?

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

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

EPDP Team Recommendation #3.

In accordance with the EPDP Team Charter and in line with Purpose #2, the EPDP Team undertakes to make a recommendation pertaining to a standardised model for lawful disclosure of non-public Registration Data (referred to in the Charter as 'Standardised 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 those parties/groups consist of different types of third-party requestors?

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.

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.

EPDP Team
1) The EPI
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terms of re
• The feasi
between le
• Examples
natural per
• Privacy ri
• Other pot
3) The EPI



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 <https://www.icann.org/octo>). 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

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.



Data Retention

EPDP Team Recommendation #15.

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 relevant 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 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 fifteen months following the life of the registration plus three months to implement the deletion, i.e., 18 months³⁴. This retention is grounded on the stated policy stipulation within the TDRP that claims under the policy may only be raised for a period of 12 months after the alleged breach (FN: see TDRP section 2.2) of the Transfer Policy (FN: 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 4 -7 for other purposes specified in Recommendation 1 for shorter periods. (Footnote: In Phase 2, the EPDP Team will work on identifying different retention periods for any other purposes, including the purposes identified in this Report.) (---)

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.

De

Review legal guidance provided in phase 1

Territorial Scope

Legal Basis (6.1b)

Technical Contact

Whois Accuracy

Further Information



Individuals can participate as observers



Observers can:

- Subscribe to the mailing list
- listen to audio-cast and view-only Adobe Connect of all meetings
- be a public consultation respondent



Learn about the EPDP and its work:

<https://community.icann.org/x/IYEpbQ> (EPDP Team wiki)

<https://63.schedule.icann.org/meetings/901519> (EPDP HIT Session at ICANN63)



Get involved:

<https://www.icann.org/news/announcement-2018-07-19-en>

Engage with ICANN – Thank You and Questions



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