Preliminary Rec #7 – Authorization Provider
Consider outstanding items:

a. "less invasive" retain reference or not (paragraph 5).

Comments provided:

- Matthew Crossman: I went back and tracked down the source for the "invasive" language. It is in ICO guidance (as intrusive rather than invasive): "When is processing 'necessary'?
  Many of the lawful bases for processing depend on the processing being "necessary". This does not mean that processing has to be absolutely essential. However, it must be more than just useful, and more than just standard practice. It must be a targeted and proportionate way of achieving a specific purpose. The lawful basis will not apply if you can reasonably achieve the purpose by some other less intrusive means, or by processing less data."https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/lawful-basis-for-processing/
- NCSG: Suggest rewording to: "Would other available data sources achieve the same effect?
- Franck Journoud: The SSAD policy should leverage the work done for the use cases, which detailed which data fields are necessary for each legitimate purpose. The authorization provider won't have that expertise (because they are not themselves cybercrime investigators, or consumer protection investigators, etc.)

Leadership recommendation:

- Retain "Consider whether less invasive means would achieve the same goal" but add footnote to ICO guidance to provide appropriate context.

b. Geographic application (paragraph 6, sub-bullet 2 and 3)

Background:

- In phase 1, the EPDP recommended the following: "The EPDP Team recommends that Registrars and Registry Operators are permitted to differentiate between registrants on a geographic basis, but are not obligated to do so." But this recommendation did not obtain the support of IPC / BC, SSAC and ALAC. The EPDP Team did have extensive discussions on whether to carry out a similar study as was recommended in relation to legal/natural, but this did not obtain sufficient support.
- In its consideration of the recommendations, the ICANN Board provided the following direction: "In adopting this Recommendation, the Board notes its understanding that there was divergence in the EPDP about the value of a study to inform the policy, and that requests for such a study have been presented to the Board. The Board directs the CEO and org to discuss with the EPDP Phase 2 Team the merits of a study to examine the feasibility and public interest implications of distinguishing between registrants on a geographic basis based on the application of GDPR. Further action should be guided by the conversations within the EPDP Phase 2 Team".

- It is rare for consensus policy recommendations to not be generally applicable – the underlying premise of consensus policies is that the provide predictability and requirements across all contracted parties.

Leadership recommendation:

- "If the requested data contains personal data the authorization provider should consider if the balancing test as described in paragraph 7 below is applicable and proceed accordingly."
- Commence discussions with ICANN Org on the merits of a study to examine the feasibility and public interest implications of distinguishing between registrants on a geographic basis based on the application of GDPR.

c. Must/should/may (paragraph 7)

- Current language: "If, based on consideration of the above factors, the authorization provider determines that the requestor's legitimate interest is not outweighed by the interests or fundamental rights and freedoms of the data subject, the data [should (if data is not disclosed a rationale should be provided to explain why)/may/must (unless there are other extenuating circumstances)] be disclosed. The rationale for the approval should be documented".
- Question put forward to ICANN Org: Could ICANN org provide detail on how/if it would enforce a policy with a "should" directive? By way of example, how would the following text be enforced? "If, based on consideration of the above factors, the authorization provider determines that the requestor's legitimate interest is not outweighed by the interests or fundamental rights and freedoms of the data subject, the data should be disclosed."

Leadership recommendation:

- [Assuming that 'should' cannot be enforced]: Update language to read: "If, based on consideration of the above factors, the authorization provider determines that the requestor's legitimate interest is not outweighed by the interests or fundamental rights and freedoms of the data subject, the data **is expected to** be disclosed. The rationale for the approval should be documented. **If all other requirements for disclosure have also been met, the data MUST be disclosed.**

Preliminary Rec #11 – Terms of Use (20 minutes)

a) Review comments / suggestions provided by deadline

Comments received:

Privacy policy:

- Margie: "The applicable lawful bases for each act of processing" - what is intended here? That any possible legal bases be listed?
- Hadia (proposed addition): "Information about the data subjects rights and the method by which they can exercise these rights"

Preliminary Rec #14 - Automation

Comments received:

- NCSG: This language [“The EPDP Team acknowledges that full automation of the SSAD may not be possible, but recommends that the SSAD must be automated where both technically feasible and legally permissible“] is really objectionable. At worst, you want to say "may" be automated, it is not a consensus policy ever, that it "must" be automated. Suggest rewording to: "The EPDP Team recommends that those aspects of the SSAD identified below may be automated where both technically feasible and legally permissible."
- NCSG: [The SSAD must allow for automation of the processing of well-formed, valid, complete, properly-identified requests from accredited users with some limited and specific set of legal basis and data processing purposes which are yet to be determined. These requests MAY be automatically processed and result in the disclosure of non-public RDS data without human intervention.] Not acceptable.
    - Mark SV: Suggest a change from MUST to SHOULD