

Feasibility of unique contacts – Proposed text for inclusion in the Initial Report

The EPDP Team was tasked by the GNSO Council to address the following two questions:

- i. Whether or not unique contacts to have a uniform anonymized email address is feasible, and if feasible, whether it should be a requirement.
- ii. If feasible, but not a requirement, what guidance, if any, can be provided to Contracted Parties who may want to implement uniform anonymized email addresses.

In addressing these questions, the EPDP Team started with a review of the [legal guidance](#) received during phase 1 and considered possible proposals that could provide sufficient safeguards to address issues flagged in the legal memo. The EPDP Team observed that the terminology used in the context of this discussion could benefit from further precision. The EPDP Team tasked the legal committee with proposing both updated terminology and reviewing clarifying questions to send to Bird & Bird. The legal committee proposed a set of working definitions, which it submitted to the EPDP Team on 23 February 2021 (see [here](#)). In addition, the legal committee developed a set of follow up questions which it submitted to Bird & Bird, and Bird & Bird provided a [response](#) on 9 April 2021. The EPDP Team considered this response in the development of its response to the Council's questions.

Definitions

Following the initial review of the first charter question, the EPDP Team noted the term anonymous was misapplied in this question. The EPDP Team noted that for data to be truly anonymized under the GDPR, the data subject could not be identifiable "either **by the controller** or by another person" either directly or indirectly. (emphasis added) (See, GDPR Article 26) With this understanding, the EPDP Team chose to focus its question on the pseudonymization of data and further refined the definitions in its follow-up questions to Bird & Bird.

"Registrant-based email contact", means "an email for all domains registered by a unique registrant [sponsored by a given Registrar] OR [across Registrars], which is intended to be pseudonymous data when processed by non-contracted parties."

"Registration-based email contact", means "a separate single use email for each domain name registered by a unique registrant, which is intended to be anonymous data when processed by non-contracted parties."

Background Information and EPDP Team Observations

In developing its response to the Council questions, the EPDP Team would like to remind the Council and broader community of the following:

Annex to the Temporary Specification ("Important Issues for Community Consideration")

- The [Temporary Specification for gTLD Registration Data](#), as adopted by the ICANN Board on 17 May 2018, included the following language in the Annex titled “Important Issues for Community Consideration”:

“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.”

For reference, Appendix A, Section 2.5.1 states that: “Registrar MUST provide an email address or a web form to facilitate email communication with the relevant contact, but MUST NOT identify the contact email address or the contact itself”.

Relevant EPDP Phase 1 Recommendations

EPDP Team Recommendation #6

The EPDP Team recommends that, as soon as commercially reasonable, Registrar must provide the opportunity for the Registered Name Holder to provide its Consent to publish redacted contact information, as well as the email address, in the RDS for the sponsoring registrar.

EPDP Team Recommendation #13

- 1) The EPDP Team recommends that the Registrar MUST provide an email address or a web form to facilitate email communication with the relevant contact, but MUST NOT identify the contact email address or the contact itself, unless as per Recommendation #6, the Registered Name Holder has provided consent for the publication of its email address.
- 2) The EPDP Team recommends Registrars MUST maintain Log Files, which shall not contain any Personal Information, and which shall contain confirmation that a relay of the communication between the requestor and the Registered Name Holder has occurred, not including the origin, recipient, or content of the message. Such records will be available to ICANN for compliance purposes, upon request. Nothing in this recommendation should be construed to prevent the registrar from taking reasonable and appropriate action to prevent the abuse of the registrar contact process.¹

EPDP Phase 2 consideration of this topic

The EPDP Phase 2 Final Report noted that:

“Feasibility of unique contacts to have a uniform anonymized email address: The EPDP Team received legal guidance that indicated that the publication of uniform masked email addresses results in the publication of personal data; which indicates that wide publication of masked email addresses may not be currently feasible under the GDPR. Further work on this issue is under consideration by the GNSO Council.”

¹ Examples of abuse could include, but are not limited to, requestors purposely flooding the registrar’s system with voluminous and invalid contact requests. This recommendation is not intended to prevent legitimate requests.

EPDP Team Proposed Responses to Council Questions

- i. Whether or not unique contacts to have a uniform anonymized email address is feasible, and if feasible, whether it should be a requirement.
- ii. If feasible, but not a requirement, what guidance, if any, can be provided to Contracted Parties who may want to implement uniform anonymized email addresses.

Although the EPDP Team recognizes that it may be technically feasible to have a registrant-based email contact or a registration-based email contact, there are legal risks involved that prevent the EPDP Team from making a recommendation to require Contracted Parties to make a registrant-based or registration-based email address publicly available at this point in time. The EPDP Team does note that certain stakeholder groups have expressed the desirability of a registration-based email contact for contactability purposes and a registrant-based email contact for registration correlation purposes.

Nevertheless, for those Contracted Parties who would like to provide a registrant-based or registration-based email address, either publicly or upon request, the EPDP Team recommends that those Contracted Parties review the guidance provided by Bird & Bird on this topic (see Annex X).