

ICANN

VIRTUAL POLICY FORUM

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14–17 June 2021

GNSO EPDP Phase 2A Community Update and Consultation

16 June 2021

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Followed by Community Input & Clarifying Questions

Introduction

Two topics from phase 1 & 2 for further review by EPDP Team

Differentiation between Legal & Natural Person Data

- i. Whether any updates are required to the EPDP Phase 1 recommendation on this topic (“Registrars and Registry Operators are permitted to differentiate between registrations of legal and natural persons, but are not obligated to do so”);
- ii. What guidance, if any, can be provided to Registrars and/or Registries who differentiate between registrations of legal and natural persons

&

Feasibility of unique contacts to have a uniform anonymized email address

- 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.

Initial Report

- ⦿ Input welcome until 19 July (see <https://www.icann.org/public-comments/epdp-phase-2a-initial-report-2021-06-03-en>)
- ⦿ Initial Report should be mainly seen as a tool to solicit community input on areas where there remains significant divergence
- ⦿ Where applicable, differing positions have been reflected in the Report.
- ⦿ Specific questions that the EPDP Team is looking for input on have been called out in relation to each of the preliminary recommendations.
- ⦿ Commenters are encouraged to focus their input on these questions as well as to make specific proposals for what changes or additions the EPDP Team should consider as it finalizes its report.

Legal vs Natural

- i. Whether any updates are required to the EPDP Phase 1 recommendation on this topic (“Registrars and Registry Operators are permitted to differentiate between registrations of legal and natural persons, but are not obligated to do so”);

Preliminary Rec #1 & Question #1

- There are different perspectives within the EPDP Team on this question that are reflected in the report.

Preliminary Rec#1. No changes are recommended, at this stage, to the EPDP Phase 1 recommendation on this topic (“Registrars and Registry Operators are permitted to differentiate between registrations of legal and natural persons, but are not obligated to do so”).

(note, for clarity, preliminary recommendation #1 aims to reflect that there is currently no consensus on whether there should be changes to the phase 1 recommendation. The EPDP Team will consider this question further following the close of the public comment period.)

Q1.

Is there new information or inputs that the Phase 2A team has not considered in assessing whether to make changes to the recommendation that Registrars and Registry Operators may, but are not obligated to, differentiate between legal and natural persons?

Preliminary Rec #2 & Question #2

Preliminary Rec#2. The EPDP Team recommends that the GNSO Council monitors developments in relation to the adoption and implementation of relevant legislative changes (for example, NIS2), relevant decisions by pertinent tribunals and data protection authorities, as well as the possible adoption of the SSAD to determine if/when a reconsideration of this question (whether changes are required to the EPDP Phase 1 recommendation “Registrars and Registry Operators are permitted to differentiate between registrations of legal and natural persons, but are not obligated to do so”) is warranted. The GNSO Council is expected to consider not only input on this question and any new information from GNSO SG/Cs but also ICANN SO/ACs to help inform a decision on if/when this question is expected to be reconsidered.

Q2.

Is this recommendation necessary for the GNSO council in considering future policy work in this area? If yes, in what ways does this monitoring assist the Council?

Preliminary Rec #3 & Question #3

Preliminary Rec#3. Introduction of a standardized data element that would indicate the type of registrant concerned (legal/natural) resulting in updates to EPDP Phase 1 recommendations #5 (optional data element for Registrars to collect), #7 & #8 (Transfer of data elements) and #10 (redaction of data elements)

Q3.

- 1. Should a standardized data element be available for a Contracted Party to use? If yes, why? If no, why not? Why is harmonization of practices beneficial or problematic?**
- 2. If yes, what field or fields should be used and what possible values should be included, if different from the ones identified above? Aspects of the recommendation that the EPDP Team is looking for specific input on having been marked above with *, indicating the options that are under consideration.**
- 3. If such a standardized data element is available, MUST a Contracted Party who decides to differentiate use this standardized data element or should it remain optional for how a Contracted Party implements this differentiation?**

Legal vs. Natural

- ii. What guidance, if any, can be provided to Registrars and/or Registries who differentiate between registrations of legal and natural persons.

Preliminary Rec #4

Preliminary Rec#4 (abbreviated version). The EPDP Team recommends that Contracted Parties who choose to differentiate based on person type SHOULD follow the guidance and clearly document all data processing steps.

1. Registrants should be allowed to self-identify as natural or legal persons
2. Data of natural persons is redacted from the public RDDS unless the data subject has provided their consent or it is legitimate to publish
3. Registrars should consider using a standardized data element in RDDS, SSAD or their own data sets to indicate the type of person it concerns
4. Registrars should clearly communicate the nature and consequences of a registrant identifying as a legal person
5. If the Registrants identify as legal persons and confirm that only non-personal data is present, then Registrars should publish the Registration Data in the publicly accessible Registration Data Directory Services
6. Registrants (data subjects) must have means to correct possible mistakes
7. Distinguishing between legal and natural person registrants alone may not be dispositive of how the information should be treated (made public or masked)

Question #4

Q4.

1. Does this guidance as written provide sufficient information and resources to Registrars and Registry Operators who wish to differentiate? If not, what is missing and why?
2. Are there additional elements that should be included?
3. Are there legal and regulatory considerations not yet considered in this Initial Report, that may inform Registries and Registrars in deciding whether and how to differentiate, and if so, how?
4. If a Registrar or Registry Operator decides to differentiate, should this guidance become a requirement that can be enforced if not followed (“MUST, if Contracted Party decides to differentiate”)?

Feasibility of Unique Contacts

- 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.

Preliminary Rec #5 & Question #5

Preliminary Rec#5. The EPDP Team recommends that Contracted Parties who choose to publish a registrant- or registration-based email address in the publicly accessible RDDS should ensure appropriate safeguards for the data subject in line with relevant guidance on anonymization techniques provided by their data protection authorities and the appended legal guidance in this recommendation (see Annex E).

Q5.

- 1. Does this guidance as written provide sufficient information and resources to Registrars and Registry Operators who wish to publish a registrant- or registration-based email address? If not, what is missing and why?**

Definitions from the Initial Report:

- ⊙ "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."

Community Input & Clarifying Questions

Instructions

- ⦿ Please identify yourselves and your affiliation
- ⦿ If you are referring to a specific recommendation or question, please state this specifically.
- ⦿ Please do not restate views or positions that have already been reflected in the Initial Report but put forward new ideas / proposals / information that the EPDP Team should consider.
- ⦿ Submit your comments and suggestions to the public comment forum by 19 July: <https://www.icann.org/public-comments/epdp-phase-2a-initial-report-2021-06-03-en>