



EPDP Phase 2A

Minority Statements Brief

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CPWG

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Agenda



- BC– Minority Statement
- IPC – Minority Statement
- GAC – Minority Statement
- NCSG – Minority Statement
- RrSG – Minority Statement
- RYSG – Minority Statement
- SSAC – Minority Statement
- Questions?

BC – Minority Statement



General EPDP Phase 2A Policy: The resulting policy exceeds what is necessary to protect the data of natural persons. Ineffectual policy in relation to anonymous/pseudonymous email addresses

Consensus: BC does not support a “consensus” designation.

1. Legal vs natural distinction:

- Lack of enforceable outcomes
- Lack of responsiveness to European legislative progress that will impact developed policy
- ICANN policy must require such differentiation to ensure the security and stability of the global DNS.
- recent survey by the Messaging, Mobile and Malware Anti-Abuse Working Group (M3AAWG)⁵¹, which detailed the substantial limitations of current access to non-public domain name registration records and affirmed that the solutions currently discussed by ICANN would not meet the needs of law enforcement and cybersecurity actors.
- Recommendation #17.1 should stand or should become the “default” ICANN policy
- Encourage ICANN to commence establishing a code of conduct that includes all stakeholders

BC – Minority Statement



feasibility of unique contacts to have a uniform anonymized email address:

- registrant-based pseudonymous email address should be ***required*** to facilitate the investigation of DNS abuse by enabling contactability and cross-referencing of registrations by registrants.
- Recommending that contracted parties evaluate legal advice and assess risks, benefits and safeguards is likely to result in an over-cautious, weak, and ultimately ineffectual policy.

IPC – Minority Statement

General EPDP Phase 2A Policy: the EPDP Phase 2A Final Report fails to accomplish its ultimate goal. Fails to meet the overarching goal of the EPDP to “preserve the WHOIS database to the greatest extent possible” while complying with privacy law.

Consensus: is supportive of the consensus achieved to create a standardized data element to reflect the (legal vs. natural) nature of the registrant and/or the registration data.

1. Legal vs natural distinction:

- Rely on registrant self designation
- Failing to require differentiation
- Common data element: appreciating coming to consensus on this, but its use should be mandatory
- Code of conduct: the recommendation in week insofar as it does not actually mandate the creation of a Code of Conduct. All stakeholders need to participate in such an effort and not only controllers and processors
- The topic ““The EPDP Team will determine and resolve the Legal vs. Natural issue in Phase 2.” remains unresolved

IPC – Minority Statement



2. feasibility of unique contacts to have a uniform anonymized email address:

- registrant-based pseudonymous email address should be published on a mandatory basis in WHOIS/RDDS.
- the public interest benefits of such publication outweigh the data subject's privacy rights as the ability to use pseudonymized registrant-based email addresses is critical in facilitating cross-domain ownership correlation to address large-scale security threat networks, phishing schemes, and intellectual property-infringing sites.

GAC – Minority Statement



Statement Supported by: ALAC, BC and IPC

General EPDP Phase 2A Policy: falls short of the GAC’s expectations for policies that would require the publication of domain name registration data that is not protected under the EU’s General Data Protection Regulation (GDPR) and create an appropriate framework to encourage the publication of pseudonymized email contacts with appropriate safeguards.

Constructive components

1. creation of data fields to flag/identify legal registrants and personal data;
2. specific guidance on what safeguards should be applied to protect personal information when differentiating
3. Encouragement for the creation of a Code of Conduct that would include the treatment of domain name registration data from legal entities;
4. encouragement for the GNSO to follow legislative developments
5. useful context and guidance for those who wish to publish pseudonymized emails.

GAC – Minority Statement



1. Legal vs natural distinction:

- Optional rather than required actions
- Some analysis shows that a considerably larger set of registration information was redacted as compared to what is required by GDPR, i.e. “perhaps five times as much as is necessary.”
- differentiation should be required
- the public interest outweighs commercial concerns, particularly because the publicly available information would promote the stability, security and resilience of the DNS.
- Stakeholders affected by the code of conduct should be given the opportunity to participate in developing the guidance.

2. feasibility of unique contacts to have a uniform anonymized email address:

- The GAC welcomes steps to provide guidance on publishing an email address through the data protection method of using anonymizing techniques and notes the reduced levels of risk this provides.
- Notes the benefits that publication of pseudonymized emails would provide, particularly with regard to facilitating quick and effective communications with domain name registrants
- There have been reports that certain web forms have not been effective mechanisms to communicate with registrants

NCSG – Minority Statement



General EPDP Phase 2A Policy: The NCSG are glad to see the final tasks of the EPDP phases 1 and 2 completed. NCSG are also glad that ICANN is finally complying with data protection law..

General:

- NCSG usually alone in stressing the rights of the registrant. NCSG should be joined by at least ALAC, SSAC and the GAC, who have clear roles in representing registrants' rights.
- CPs support their customers and pointed out their own obligations to them regularly.
- ICANN should be stressing the rights of customers in its role as neutral broker of the MS arrangement to manage the gTLDs .
- The precise nature of the roles of ICANN and the contracted parties should have been clarified.
- much time would have been saved, and confusion avoided, had we been more aware of these eventual contractual relationships.
- the desire to curb the implementation of the GDPR years before potential regulation would be enacted and cast into national laws, indicates a failure to appreciate data protection law and registrants' rights

1. Legal vs natural distinction:

- It is not practical or desirable to mandate the distinction
- The contracted parties have developed excellent guidance for their members to help them decide how to deal with this distinction.
- That guidance must not form part of the policy.
- The contracted parties are perfectly capable of publishing this guidance on their own
- ICANN is perfectly capable of pointing to it as private sector best practice
- Given that the recommendation in relation to the common data element will remain that it is a voluntary field, and it is up to the contracted parties, whose business models vary enormously, how they use the field(s), we do not believe that recommendations concerning the precision of the field are useful.

Registrar Stakeholder Group – Minority Statement



General EPDP Phase 2A Policy: The RrSG team is therefore confident that the outcome of the Phase 2A work, including the guidance and the optional requirements for differentiation and use of a registrant-based or registration-based email address, is the appropriate result.

General:

- each individual registrar must be able to determine what they consider to be commercially and technically feasible for their own unique business.
- each individual registrar must be able to determine the level of risk they assume,
- Suggested policy obligations were not grounded in strict necessity or broadly-accepted improvements to the domain ecosystem, which may have provided justification for requiring them.

Registrar Stakeholder Group – Minority Statement



1. Legal vs natural distinction:

- The RrSG team supports maintaining Phase 1 Recommendation #17 (1), and considers this to be resolution of the issue as mentioned in Phase 1 Recommendation #17 (3).
- Both the use of “flags” or “fields” to indicate person type or the presence of personal data as well as the contents of the guidance itself have been approached within this Phase as optional, rather than mandatory for all registrars.
- The guidance is high-level and the product of significant compromise; it is useful but is not applicable in all situations or to all registrars worldwide.
- Code of Conduct can only be created by the relevant Contracted Parties themselves, with all due consideration of input from the community.

2. feasibility of unique contacts to have a uniform anonymized email address:

While some implementations of this publication option may be lower risk than others, the registrar stakeholder group notes that each individual registrar must be able to determine the degree to which they assume legal risks.

Registry Stakeholder Group – Minority Statement



General EPDP Phase 2A Policy: the RYSG does not object to the passage of this report and the recommendations as stated. It is noted however, that this support is based on the good faith belief that all parties maintain the agreed level of consensus.

1. Legal vs natural distinction:

- The Legal vs. Natural Issue is Resolved
- Optional Differentiation Remains a Good Outcome
- Contracted Parties must be permitted to control their own legal risks
- Maintaining flexible rather than prescriptive policies on legal vs. natural differentiation ensures that Registrars and Registries are nimble and able to quickly respond to future regulatory changes that may impact the publication of legal person data without requiring additional policy making.
- Creating a common data element is out of scope
- the RySG does not support using this field in either EPP or RDDS
- While the group acknowledges there may be a use case linked to disclosure decisions in the SSAD, they would prefer to defer those decisions, as is appropriate, to the development of the SSAD rather than taking steps now that may limit the utility of this data element once the SSAD is functional.
- As a compromise, the RYSG agreed that this is a completely optional field
- In short, the guidance included in this report on legal vs. natural differentiation is woefully inadequate if its purpose is actually assisting a Contracted Party who wants to differentiate.

SSAC– Minority Statement



General EPDP Phase 2A Policy: the SSAC believes the focus of the ICANN Community and ICANN org’s attention should be to build and operate an effective SSAD.

Recommendations:

- The SSAC recommends the Generic Name Supporting Organization (GNSO) and ICANN org focus their attention on building and operating an effective differentiated access system.

Legal vs natural distinction:

- A data element should be defined that denotes the legal status of the registrant.
- This data element should be displayed as part of the publicly available data.
- Registrants should be classified as either natural or legal persons. This should be required at the time of registration, for all new domain registrations.

SSAC– Minority Statement



- **feasibility of unique contacts to have a uniform anonymized email address:**
 1. The two policy objectives--namely (1) the ability to quickly and effectively contact the registrant without disclosing personal data, and (2) A common identifier that helps investigators to correlate registrations with common contacts should be considered separately.
 2. To achieve policy objective (A1), registrars should deploy (or continue to deploy) methods to support registrant-based email contact (See section 2.1.2 discussion of the two methods). The SSAC further recommends uniform requirements for safeguards be developed for the registrant-based email contact. The requirements should include maintaining the privacy of the registrant as appropriate and service level commitments to set expectations for the use of the
 3. To achieve policy objective (A2), additional research is needed on the methods, their efficacy, and their tradeoffs. We recommend the EPDP Phase 2A *not* specify a method for correlating registrations with a common contact at this time.

Questions?



Thank you