gTLD Registration Data

Phase 2 and Phase 2A of the GNSO Expedited Policy Development Process on the Temporary Specification for gTLD Registration Data

ICANN Policy Development Accelerator
Term 1 | Module 3 | November 2023

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1.   Introduction to Module 3

This educational module is dedicated to Phase 2 and Phase 2A of the Generic Names Supporting Organization (GNSO) Expedited Policy Development Process (EPDP) on the Temporary Specification (TempSpec) for Generic Top-Level Domain (gTLD) Registration Data. In this module, we delve into the critical deliberations and recommendations that have shaped the policies surrounding gTLD Registration Data. We explore the perspectives of various ICANN community groups participating in these phases, including their insights, recommendations, and minority statements. Additionally, we closely examine the advice provided by the At-Large Advisory Committee (ALAC), Governmental Advisory Committee (GAC), and Security and Stability Advisory Committee (SSAC). By the end of this module, readers will have a comprehensive understanding of the developments and insights that emerged from these pivotal phases in the EPDP-TempSpec.

Learning Outcomes for Module 3

➔ Summarize the recommendations that emerged from EPDP-TempSpec Phase 2 and Phase 2A and their potential implications for ICANN and the Internet community.
➔ Assess the advice provided by the At-Large Advisory Committee (ALAC), Governmental Advisory Committee (GAC), and Security and Stability Advisory Committee (SSAC) during EPDP-TempSpec Phase 2 and Phase 2A and understand how these advisory committees contribute to ICANN policy development.
➔ Explore minority statements within the EPDP-TempSpec Phase 2 and Phase 2A Final Reports and gain an understanding of dissenting opinions and their impact on policy discussions.

Estimated Time

Reading through Module 3 and the required listening sessions should take approximately 3.5–4 hours.

2.   EPDP-TempSpec Phase 2

2.1   Deliberations and Recommendations of EPDP-TempSpec Phase 2

Phase 2 of the GNSO Expedited Policy Development Process (EPDP) on the Temporary Specification for gTLD Registration Data (Temporary Specification or TempSpec) aimed to address:

- The development of policy recommendations for a system for standardized access to nonpublic gTLD Registration Data,
- Issues outlined in the Annex to the Temporary Specification, and
- Unresolved issues from EPDP Phase 1.

The EPDP-TempSpec team agreed that priority should be given to completing its deliberations concerning a System for Standardized Access/Disclosure (SSAD). It agreed, however, that where feasible, the team would also endeavor to make progress on priority 2 items in parallel. To streamline their work, the EPDP-TempSpec team maintained a detailed work plan, effectively segmenting its discussions based on priority and topic relevance. The EPDP-TempSpec team organized its work into two priorities:

1. Discussion of a System for Standardized Access/Disclosure (SSAD) to nonpublic registration data: One of the primary focuses of Phase 2 was the development of policy recommendations for an SSAD to enable standardized access to nonpublic gTLD Registration Data. This involved exploring the technical and operational aspects of implementing such a system while considering the data protection concerns of individuals.
2. Priority 2 Topics:
   a. Display of information of affiliated vs. accredited privacy/proxy providers
   b. Legal vs. natural persons
   c. City field redaction
   d. Data retention
   e. Potential purpose for ICANN's Office of the Chief Technology Officer
   f. Feasibility of unique contacts to have a uniform anonymized email address
   g. Accuracy and WHOIS Accuracy Reporting System

The team also established a Legal subteam to prepare questions for legal analysis from external legal counsel.[1]

The EPDP-TempSpec team published its findings and preliminary recommendations in the Phase 2 Initial Report in February 2020.[2] The Phase 2 Initial Report laid out the underlying assumptions, preliminary recommendations, and considerations for the SSAD. This proposed system was recommended to manage third-party requests for nonpublic domain registration

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[1] See EPDP -P2 Legal subteam for the legal memos prepared for the EPDP team by external legal counsel, Bird & Bird, https://community.icann.org/display/EOTSFGRD/EPDP+-P2+Legal+subteam
[2] See Initial Report of the Temporary Specification for gTLD Registration Data Phase 2 Expedited Policy Development Process, 7 February 2020, https://gnso.icann.org/sites/default/files/file/field-file-attach/epdp-phase-2-initial-report-07feb20-en.pdf

data, striking a balance between data protection and legitimate access requirements. The team delineated guidelines on data redaction for public registration data directory services, outlined the minimum registration data retention periods considering operational necessities, and emphasized the relevance of Data Protection Impact Assessments (DPIAs) for systems like the SSAD. The discussion also ventured into the feasibility of requiring unique contacts to have a uniform anonymized email address across domain name registrations at a given registrar and the significance of the city field in registration data. The team also examined the process of data transfer between registrars during domain migrations to ensure its harmony with data protection obligations.

REQUIRED LISTENING

Please watch the entire ICANN66 session on "EPDP-TempSpec Phase 2" to get an overview of how the EPDP-TempSpec Phase 2 team navigated its work and sought feedback from the ICANN community.

Please note, the discussion begins approximately 5:00 minutes into the recording.

The Phase 2 Initial Report was made available for Public Comment from 7 February–23 March 2020 and received 45 submissions from GNSO Stakeholder Groups, Constituencies, ICANN Advisory Committees, companies, organizations, and two individuals. While the Phase 2 Initial Report was open for Public Comment, the EPDP-TempSpec team focused on the priority 2 topics which were documented in an Addendum to the Phase 2 Initial Report[3], which itself was made available for Public Comment from 26 March–5 May 2020. To facilitate its review of the Public Comment submissions, the ICANN organization support team developed a set of Public Comment review tools and discussion tables, which provide a high-level assessment of the views expressed on the preliminary recommendations as well as the detailed comments provided in each submission.[4]

After the Addendum's Public Comment closed, the EPDP-TempSpec team finalized its recommendations and published the Phase 2 Final Report on 31 July 2020.[5] The EPDP-TempSpec team made 18 recommendations on the SSAD, four recommendations on priority 2 topics, and two additional conclusions on priority 2 topics.

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[3] See Addendum to: Initial Report of the Temporary Specification for gTLD Registration Data Phase 2 Expedited Policy Development Process, https://gnso.icann.org/sites/default/files/file/field-file-attach/epdp-phase-2-addendum-26mar20-en.pdf
[4] See EPDP on the Temporary Specification for gTLD Registration Data, Public Comment Review Tool & Discussion Drafts, https://community.icann.org/pages/viewpage.action?pageId=126430750
[5] See Final Report of the Temporary Specification for gTLD Registration Data Phase 2 Expedited Policy Development Process, https://gnso.icann.org/sites/default/files/file/field-file-attach/epdp-phase-2-temp-spec-gtld-registration-data-2-31jul20-en.pdf

Priority	Summary of Recommendations
1. SSAD and all directly-related questions	- Detailed specifications for the SSAD, including policy requirements and data access controls. - Processes for accreditation and authorization of parties seeking access to nonpublic gTLD Registration Data. - Requirements for requestors' identification of legitimate purposes and lawful bases for accessing nonpublic data with each request for data access. - Policies for data minimization, retention, and security measures.
2. Priority 2 Topics	- Recommendations on the display of affiliated and/or accredited privacy/proxy providers' contact data in public registration data directory services. - Guidance on redaction and disclosure requirements for the city field in registration data. - Recommendations on data retention periods, specifying the length of time registration data must be retained. - Recognizing "contributing to the maintenance of the security, stability, and resilience of the Domain Name System (DNS) in accordance with ICANN's mission" as a purpose for processing gTLD Registration Data, as an update to the original "Purpose 2" identified by the EPDP-TempSpec Phase 1 working group.

The EPDP-TempSpec team reached an additional two conclusions. Most EPDP-TempSpec team members concluded that there was no need for the team to specify, as a matter of ICANN Consensus Policy, additional purposes to support ICANN's Office of the Chief Technology Officer (OCTO)'s legitimate access to gTLD Registration Data since the updated Purpose 2 for processing registration data adequately encompasses OCTO's tasks and those of other teams in the ICANN organization. Regarding gTLD Registration Data accuracy and the WHOIS Accuracy Reporting System, the EPDP-TempSpec team halted consideration of this topic. Instead, the GNSO Council planned to form a scoping team to examine the issues and decide on next steps, separate from the EPDP-TempSpec.

Due to external factors and time limitations, the Final Report did not cover all priority 2 items. Specifically, the differentiation between legal and natural persons was considered in Phase 2 but did not result in new policy recommendations. A study on the topic arrived too late for proper evaluation. Additionally, the EPDP-TempSpec team determined based on legal advice that requiring registrars to publish unique, anonymized email addresses across domain name registrations would result in the publication of personal data, which could potentially breach the European Union's General Data Protection Regulation (GDPR). As a result of that determination, the working group did not issue a recommendation on that topic and noted that further work on that issue was under consideration by the GNSO Council.

The GNSO Council considered the Final Report and adopted it with the necessary GNSO supermajority support in September 2020.[6] The consideration and analysis of the EPDP-TempSpec Phase 2 recommendations will be covered in depth in Module 4.

REQUIRED LISTENING

Please watch the entire "GNSO Council EPDP-TempSpec Phase 2 Final Report webinar" for an understanding of how EPDP-TempSpec Phase 2 recommendations are intended to work in practice.

Pay special attention to the Consensus Designations slide at minute 35:35 of the recording. This provides context for how various ICANN community groups viewed each recommendation.

2.2   ICANN Community Group Perspectives in EPDP-TempSpec Phase 2

Throughout Phase 2, three of the ICANN Advisory Committees issued inputs related to gTLD Registration Data and the progress of the EPDP-TempSpec team. In addition, seven stakeholder groups submitted minority statements to the EPDP-TempSpec Phase 2 Final Report.

2.2.1   ALAC Statements during EPDP-TempSpec Phase 2

The At-Large Advisory Committee (ALAC) submitted a response to the Public Comment proceeding for the Phase 2 Initial Report in March 2020 which indicated general support for the preliminary recommendations with a few noted concerns.[7] In its Public Comment submission, the ALAC advocated for a transparent timeline to maintain accessibility and argued against a recommendation that the policy require requestors to identify a lawful basis for requests for access that concern non-personal data, seeing it as a potential source of delays. The ALAC also pushed for broader automation of disclosure requests which, in the ALAC's view, could be achieved by seeking the advice of data protection authorities. Addressing response times, the ALAC deemed the proposed urgent response window as insufficient, suggesting a stricter 24-hour time frame. It also called for clearer guidelines on Domain Name System (DNS) abuse case response times, with a focus on transparent communication and documentation of any delays. Regarding financial aspects, the ALAC highlighted the ambiguous wording on costs to data subjects, urging clarity to prevent unexpected charges for registrants and promoting special fee structures for select organizations. The ALAC also stressed the importance of resolving priority 2 issues, notably data accuracy and distinguishing between the gTLD

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[6] See Council Resolutions 2020 - Current, Resolution 20200924-2, Adoption of the Expedited Policy Development Process (EPDP) on the Temporary Specification Phase 2 Final Report and Recommendations, https://gnso.icann.org/en/council/resolutions/2020-current#20200924-2
[7] See ALAC Statement on Initial Report of the Expedited Policy Development Process (EPDP) on the Temporary Specification for gTLD Registration Data team – PHASE 2, https://atlarge.icann.org/en/advice_statements/13769

Registration Data of legal and natural persons, warning against the pitfalls of an imprecise system.

The ALAC also provided feedback on the Addendum to the Initial Report in May 2020.[8] The ALAC endorsed recommendations concerning domains registered through accredited privacy/proxy services. It emphasized the significance of publishing gTLD Registration Data for these domains and supported the preliminary recommendations on city field redaction, data retention, and ICANN's OCTO purpose. The ALAC believed the reformulated purpose 2 sufficiently addressed OCTO's needs and fully backed the addition of the revised purpose to ICANN's reasons for processing.

On the other hand, the ALAC expressed concerns about the treatment of differentiation between registrations of legal and natural persons, urging for immediate actions and not deferrals. It also opposed the rejection of the concept of registrars creating pseudonymized email addresses for registrants to be used across all of the registrant's domain names registered via the registrar. They also expressed a pressing need to address the accuracy of gTLD Registration Data, highlighted its importance, and expressed discontent that the EPDP Phase 1 commitment on this matter had not been adequately met.

The ALAC separately published a minority statement submitted in the Phase 2 Final Report,[9] which is summarized in Section 2.2.4 below. After the Final Report was published, the ALAC published an addendum to its minority statement in August 2020 expressing general agreement with the minority statements submitted by the Business Constituency (BC), Intellectual Property Constituency (IPC), Governmental Advisory Committee (GAC), and the Security and Stability Advisory Committee (SSAC).[10] In particular, the ALAC noted appreciation for the in-depth and insightful analyses.

2.2.2 GAC Advice during EPDP-TempSpec Phase 2

Throughout EPDP-TempSpec Phase 2, the Governmental Advisory Committee (GAC) provided feedback and advice in its communiqués that are issued at the end of each ICANN Public Meeting. The GAC consistently sought clarity, expediency, and thoroughness in EPDP-TempSpec proceedings, while also stressing the need to maintain access to crucial gTLD Registration Data. It also continually called attention to the relevance of policy recommendations from the GNSO Privacy/Proxy Services Accreditation Issues Policy Development Process.

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[8] See ALAC Statement on Addendum to the Initial Report of the Expedited Policy Development Process (EPDP) on the Temporary Specification for gTLD Registration Data team – Phase 2, https://atlarge.icann.org/en/advice_statements/13775
[9] See ALAC Statement on EPDP (July 2020), https://atlarge.icann.org/en/advice_statements/13793
[10] See Addendum to the ALAC Statement on EPDP (August 2020), https://atlarge.icann.org/en/advice_statements/13795

In the ICANN64 communiqué, the GAC emphasized the need for clear milestones, timely progress reports, and a swift timeline for Phase 2, akin to Phase 1.[11] It wanted a well-defined scope for Phase 2 and called for the allocation of necessary resources, especially for legal complexities carried over from Phase 1. The GAC also suggested parallel technical studies to inform the EPDP-TempSpec team's efforts and recommended immediate implementation of new policies. Additionally, it urged the re-initiation of implementation of existing policies, such as the Privacy/Proxy Services Accreditation Issues.

The ICANN65 communiqué acknowledged the ongoing actions in Phase 2 and reiterated the points from the ICANN64 communiqué in follow-up to previous advice.[12]

In the ICANN66 communiqué, the GAC focused on ensuring "reasonable access" to nonpublic gTLD Registration Data.[13] It highlighted the need for stakeholder education and recommended a specific process to manage complaints about access to nonpublic gTLD Registration Data. The GAC also emphasized the continuing relevance of the Privacy/Proxy Services Accreditation Issues policy recommendations.

In the ICANN68 communiqué, the GAC re-emphasized the importance of maintaining as much access to gTLD Registration Data as possible.[14]

By ICANN70, while the GAC acknowledged the progress made in Phase 2, it expressed significant concerns regarding some recommendations and perceived gaps in the Phase 2 Final Report, referencing its minority statement from August 2020.[15] The GAC submitted a minority statement in the Phase 2 Final Report, which is summarized in Section 2.2.4.

2.2.3 SSAC Inputs during EPDP-TempSpec Phase 2

In May 2020, the Security and Stability Advisory Committee (SSAC) published SAC111: SSAC Comment on the Initial Report of the Temporary Specification for gTLD Registration Data Phase 2 Expedited Policy Development Process.[16] The SSAC highlighted what it observed as major issues in the legal guidance process, including delays and poor communication, which resulted in key questions regarding the handling of natural vs. legal person data and the right to object remaining unresolved. Additionally, a vital research project on differentiating between legal and

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[11] See ICANN64 Kobe Communique,
https://gac.icann.org/contentMigrated/icann64-kobe-communique?language_id=1
[12] See ICANN65 Marrakech Communique,
https://gac.icann.org/contentMigrated/icann65-marrakech-communique?language_id=1
[13] See ICANN66 Montreal Communique,
https://gac.icann.org/contentMigrated/icann66-montreal-communique?language_id=1
[14] See ICANN68 GAC Communique,
https://gac.icann.org/contentMigrated/icann68-gac-communique?language_id=1
[15] See ICANN70 GAC Communique,
https://gac.icann.org/contentMigrated/icann70-gac-communique?language_id=1
[16] See SAC111: SSAC Comment on the Initial Report of the Temporary Specification for gTLD Registration Data Phase 2 Expedited Policy Development Process,
https://www.icann.org/en/system/files/files/sac-111-en.pdf

natural persons had been delayed, impacting informed decision-making. The SSAC underscored the importance of maintaining the legitimacy of ICANN policy development and urged stricter oversight in future phases.

The SSAC also provided feedback on specific preliminary recommendations. It emphasized the importance of clear implementation guidance and the need for continuous software enhancements, particularly in the context of the proposed hybrid model. The SSAC raised concerns about timely responses for nonpublic gTLD Registration Data requests, especially for urgent cybersecurity matters, suggesting refinements to service level agreements and periodic reviews. The SSAC also emphasized the important role of automation in efficiently processing data requests.

The SSAC advised the EPDP-TempSpec team to finalize discussions on the continuous improvement of the SSAD and integrate the findings into the Phase 2 Final Report. The SSAC also recommended the GNSO Council suspend work on financial sustainability, maintaining that future policy development should strictly follow the original charters and any deviation should necessitate a charter modification. Finally, the SSAC urged the GNSO Council to consider its specific comments during its deliberations on accepting the recommendations and any subsequent implementation of the EPDP-TempSpec recommendations.

The SSAC separately published a minority statement submitted in the Phase 2 Final Report as SAC112,[17] which is summarized in Section 2.2.4.

2.2.4 Minority Statements in EPDP Phase 2 Final Report

The Final Report of Phase 2 was published on 10 August 2020. The EPDP-TempSpec Phase 2 Final Report contained a total of 22 recommendations for the SSAD, nonpublic gTLD Registration Data, and conclusions and recommendations for the Priority 2 topics carried over from Phase 1. The recommendations in Phase 2 did not reach the same level of consensus as in Phase 1:
- 11 recommendations obtained a "full consensus" designation
- 3 recommendations obtained a "consensus" designation
- 6 recommendations obtained a "strong support but significant opposition" designation
- 2 recommendations obtained a "divergence" designation

Accordingly, seven ICANN community groups submitted minority statements to the EPDP-TempSpec Phase 2 Final Report:

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[17] See SAC112: Minority Statement on the Final Report of the Temporary Specification for gTLD Registration Data Phase 2 Expedited Policy Development Process (EPDP), https://www.icann.org/en/system/files/files/sac-112-en.pdf

ICANN Community Group	Summary of Minority Statement
At-Large Advisory Committee (ALAC)	The ALAC expressed concerns over several aspects of the policy development process. It emphasized the need for a balance between privacy and public interest, urging for clearer definitions and limitations on data disclosure. The ALAC also highlighted the importance of protecting registrants' rights and ensuring accountability of disclosure requestors. It proposed amendments to improve transparency, accountability, and accuracy in data collection and disclosure practices.
Joint statement by the Business Constituency (BC)/ Intellectual Property Constituency (IPC)	The BC and IPC expressed support for the EPDP-TempSpec team's efforts but also raised concerns about certain aspects of the proposed policy. They emphasized the need for a more balanced approach to data protection and access, particularly with regard to GDPR compliance. The BC and IPC proposed amendments to address issues related to standardized access, disclosure requests, privacy/proxy registrations, organization field implementation, geographic distinction, and the legal vs. natural person distinction.
Governmental Advisory Committee (GAC)	The GAC expressed several areas of concern. It emphasized the need for a clear definition of "legitimate interests" and raised questions about the proposed standardized access model. The GAC also expressed concerns regarding potential conflicts between privacy regulations and public policy needs. It recommended further analysis and consideration of these issues to ensure an appropriate balance between privacy and public interests.
Noncommercial Stakeholder Group (NCSG)	The NCSG expressed concerns about the potential impact of the proposed policy on noncommercial stakeholders and individual privacy rights. It emphasized the importance of protecting privacy and the need for strong safeguards against misuse of registrant data. The NCSG proposed amendments to strengthen data protection measures, increase transparency, and ensure accountability of disclosure requestors.
Registrar Stakeholder Group (RrSG)	The RrSG expressed concerns about the proposed standardized access model, highlighting potential operational challenges and legal uncertainties. The RrSG emphasized the need for clear guidelines on data disclosure, improved safeguards, and enhanced accountability mechanisms. It proposed amendments to address these concerns and ensure a more balanced approach to data protection and access.
Registries Stakeholder Group (RySG)	The RySG raised questions about the proposed standardized access model and its potential impact on data protection and operational feasibility. The RySG emphasized the need for clear and practical guidelines to ensure compliance with privacy regulations. It proposed amendments to address these concerns and ensure a balanced approach that respects privacy rights while allowing for legitimate access to registration data.
Security and Stability Advisory Committee (SSAC)	The SSAC emphasized the need to prioritize security and stability in data access and disclosure practices. The SSAC proposed amendments to enhance data protection measures, improve auditability, and ensure the security of registration data. It also stressed the importance of ongoing monitoring and evaluation of the impact of the policy on security and stability.

3.   EPDP-TempSpec Phase 2A

3.1   Deliberations and Recommendations of EPDP Phase 2A

Phase 2A of the EPDP-TempSpec was a later addition to the process, born out of the recognition that two significant topics from Phase 2 required further attention:

1) Legal/Natural Distinction
   One primary deliberation was around distinguishing between domain registrations made by legal entities (like companies) vs. natural persons (individuals). This distinction is crucial because GDPR protects the data of natural persons, but data related to legal entities might not require the same level of protection. The EPDP-TempSpec team considered mechanisms by which registrars and registries might differentiate between these types of registrations and the associated implications.
2) Feasibility of Uniform Anonymized Email Addresses for Unique Contacts
   The EPDP-TempSpec team assessed the possibility of providing unique contacts with a consistent pseudonymized email address. It analyzed concrete proposals guided by legal expertise to address outlined issues. The discussions aimed to determine whether such pseudonymized email addresses for unique contacts were viable and, if so, whether they should be obligatory.

The GNSO Council reconvened the EPDP-TempSpec team to complete the consideration of these two topics in October 2020.[18] The team resumed its work and produced the Initial Report in June 2021 and published the Final Report later that year in October 2021.[19,20] The EPDP-TempSpec Phase 2A Final Report contained four recommendations in response to the remaining issues. All four recommendations obtained consensus from the team.

Phase 2A Topic	Summary of Recommendation
Legal vs. natural persons Are any updates required to the EPDP-TempSpec Phase 1 recommendation on this topic?	**Recommendation 1:** A field must be created to differentiate between legal and natural person registration data and indicate if the data contains personal information. This field should be supported by the System for Standardized Access/Disclosure (SSAD). Contracted Parties may use this field, but if a Contracted Party decides not to make use of the field, it may be left blank or may not be present.
Legal vs. natural persons	**Recommendation 2:** Contracted Parties who choose to differentiate

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[18] See Council Resolutions 2020 - Current, 20201021 Consent Agenda Item 3.3, https://gnso.icann.org/en/council/resolutions/2020-current#20201021

[19] See Initial Report of the Temporary Specification for gTLD Registration Data Phase 2A Expedited Policy Development Process, https://gnso.icann.org/sites/default/files/file/field-file-attach/epdp-phase-2a-initial-report-02jun21-en.pdf

[20] See Final Report of the Temporary Specification for gTLD Registration Data Phase 2A Expedited Policy Development Process, https://gnso.icann.org/sites/default/files/file/field-file-attach/epdp-phase-2a-updated-final-report-13sep21-en.pdf

Is there any guidance that can be provided to Registrars and/or Registries who distinguish between registrations made by legal entities and individuals?	based on person type should follow guidance to differentiate and document processing steps based on person type (legal or natural). Safeguards should be in place to prevent the disclosure of personally identifying data within legal person data. It is not the role or responsibility of the EPDP-TempSpec team to make a final determination with regard to the legal risks, as that responsibility ultimately belongs to the data controller(s). **Recommendation 3:** The developed guidance on legal/natural differentiation should be considered in any future efforts to develop a possible future GDPR Code of Conduct within ICANN, separate from existing Codes of Conduct.
Feasibility of unique contacts Should anonymized email addresses be required for unique contacts, and is it feasible to implement?	**No recommendations.** The EPDP-TempSpec team acknowledged that it is possible to have either a registrant-based email contact or a registration-based email contact. However, due to concerns and risks raised by stakeholders, the EPDP-TempSpec team did not recommend requiring Contracted Parties to make either type of email address publicly available.
Feasibility of unique contacts What guidance can be given to Contracted Parties who wish to use consistent anonymous email addresses?	**Recommendation 4:** Contracted Parties should evaluate legal guidance on publishing pseudonymized registrant-based or registration-based email addresses in publicly accessible databases. Considerations include treating email addresses as personal data, benefits of masking email addresses, risk reduction, and measures to mitigate spam and contact availability.

In October 2021, the GNSO Council adopted the Final Report.[21] The consideration and analysis of the EPDP-TempSpec Phase 2A recommendations will be covered in depth in Module 4.

3.2 ICANN Community Group Perspectives in EPDP-TempSpec Phase 2A

Throughout Phase 2A, three of the ICANN Advisory Committees issued inputs related to gTLD Registration Data and the progress of the EPDP-TempSpec working group. In addition, eight stakeholder groups submitted minority statements to the EPDP-TempSpec Phase 2A Final Report.

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[21] See Council Resolutions 2020 - Current, Resolution 20211027-2, Adoption of the Expedited Policy Development Process (EPDP) on the Temporary Specification Phase 2A Final Report and Recommendations, https://gnso.icann.org/en/council/resolutions/2020-current#20211027-2

3.2.1 ALAC Statements during EPDP-TempSpec Phase 2A

The ALAC provided specific feedback on the EPDP-TempSpec Phase 2A Initial Report during Public Comment in July 2021.[22] It opposed one recommendation and emphasized the need to balance data availability and GDPR compliance. The ALAC supported another recommendation that formalized the GNSO role in monitoring legislative changes. It also advocated for a standardized data element for legal/natural person differentiation, stressing clear communication with registrants. The ALAC agreed that Contracted Parties who choose to differentiate between legal and natural persons should follow guidance developed by the working group and document all steps of their own data processing and highlighted the importance of standardized data elements.

The ALAC separately published a minority statement in the Phase 2A Final Report, which is summarized in Section 3.2.4.[23]

3.2.2 GAC Advice during EPDP-TempSpec Phase 2A

During Phase 2A of the EPDP-TempSpec, the GAC reiterated its previous advice on related topics in its ICANN71 and ICANN72 communiqués.[24,25] It emphasized two points: First, the GAC expressed ongoing concern about the lack of a published implementation timeline for Phase 1 of the EPDP-TempSpec and urged the need for an updated schedule to guide its completion. Second, the GAC underscored the importance of resuming the implementation of Privacy/Proxy Services Accreditation Issues policy recommendations and called for prioritization and expeditious action in collaboration between the ICANN organization and the GNSO.

3.2.3 SSAC Comments during EPDP-TempSpec Phase 2A

In July 2021, the SSAC published SAC118: SSAC Comments on Initial Report of the Expedited Policy Development Process (EPDP) on the Temporary Specification for gTLD Registration Data Team – PHASE 2A.[26] SAC118 delved into the issues under consideration by the EPDP-TempSpec Phase 2A working group within the broader context of gTLD Registration Data. The SSAC observed three competing interests within the Phase 2A policy deliberation: privacy advocates urging maximum protection, data requesters seeking extensive data access, and data controllers striving to minimize costs and risks. These interests occasionally overlapped or clashed, complicating the attainment of a consensus. The SSAC also expressed

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[22] See ALAC Statement, Initial Report of the Expedited Policy Development Process (EPDP) on the Temporary Specification for gTLD Registration Data Team – PHASE 2A, https://atlarge.icann.org/en/advice_statements/13831
[23] See ALAC Statement, ALAC Minority Statement on EPDP-TempSpec Phase 2A Final Report, https://atlarge.icann.org/en/advice_statements/13837
[24] See ICANN71 GAC Communique, https://gac.icann.org/contentMigrated/icann71-gac-communique?language_id=1
[25] See ICANN72 GAC Communique, https://gac.icann.org/contentMigrated/icann72-gac-communique?language_id=1
[26] See SAC118: SSAC Comments on Initial Report of the Expedited Policy Development Process (EPDP) on the Temporary Specification for gTLD Registration Data Team – PHASE 2A, https://www.icann.org/en/system/files/files/sac-118-en.pdf

reservations about the feasibility of establishing a satisfactory differentiated access control system, citing uncertainties surrounding the SSAD and the absence of clarity in data access.

The SSAC recommended the GNSO and ICANN organization focus on the development of an efficient differentiated access system, emphasizing timeliness, reliability, usefulness, efficiency, and accessibility. The SSAC also recommended introducing a specific data element to distinguish between natural and legal persons in registration data with options for protecting data privacy. Furthermore, the SSAC recommended that registrars implement methods supporting registrant-based email contact while maintaining privacy safeguards and that additional research should be conducted for a mechanism that identifies registrations with common contacts.

The SSAC submitted a minority statement in the Phase 2A Final Report, which is summarized in Section 3.2.4. Subsequently, the SSAC updated SAC118 in November 2021 to remove an incorrect sentence and to bring SAC118 into alignment with its submitted minority statement.[27]

3.2.4 Minority Statements in EPDP-TempSpec Phase 2A Final Report

While all of the Phase 2A recommendations obtained consensus, the Final Report notes that not every participating ICANN community group agreed that the EPDP-TempSpec team provided sufficient detail. The Phase 2A chair noted in the Final Report,

> *This Final Report constitutes a compromise that is the maximum that could be achieved by the group at this time under our currently allocated time and scope, and it should not be read as delivering results that were fully satisfactory to everyone. This underscores the importance of the minority statements in understanding the full context of the Final Report recommendations.*

Accordingly, eight ICANN community groups submitted minority statements to the EPDP-TempSpec Phase 2A Final Report:

ICANN Community Group	Summary of Minority Statement
At-Large Advisory Committee (ALAC)	The ALAC appreciates the efforts of the EPDP-TempSpec Phase 2A team but feels that their work fell short of addressing the mandate adequately. Concerns include the lack of differentiation between legal and natural person data, the absence of a requirement for common data element usage, the inability to contact registrants effectively, and flaws in the overall process. The ALAC emphasizes the need for better balance and stronger regulations to protect registrants and improve the decision-making process.
Business Constituency (BC)	The BC believes that the policy exceeds what is necessary to protect natural persons' data and emphasizes the need for a distinction between legal and natural persons in registration data. They also highlight the impact of the

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[27] See SAC118v2: SSAC Comments on Initial Report of the Expedited Policy Development Process (EPDP) on the Temporary Specification for gTLD Registration Data Team – PHASE 2A, https://www.icann.org/en/system/files/files/sac-118v2-en.pdf

	Directive on measures for a high common level of cybersecurity across the [European] Union (NIS2 Directive) and urge ICANN to respond to it. The BC disagrees with several recommendations, citing weak obligations, reliance on optional measures, and lack of enforceability. It advocates for stronger policies and obligations to enhance security and stability in the Domain Name System (DNS).
Intellectual Property Constituency (IPC)	The IPC argues that data protection laws, like the GDPR, should not apply to non-personal data. They express concerns that the EPDP Phase 2A places an inappropriate burden on those advocating for the disclosure of non-personal data. The IPC supports the development of a standardized data element to indicate the nature of data but is disappointed with the limited agreement reached. It calls for explicit inclusion of requestors as controllers and processors in future Code of Conduct work. The IPC believes that a registrant-based pseudonymous email address should be published in WHOIS/Registration Data Directory Services, citing public interest benefits and potential compliance with the GDPR.
Governmental Advisory Committee (GAC)	The GAC expresses appreciation for the EPDP-TempSpec Phase 2A team's efforts but highlights concerns about the lack of enforceable obligations in the final recommendations. It emphasizes the need for mandatory differentiation between legal and natural persons' registration data and the publication of non-personal data of legal entities. The minority statement calls for the use of data fields, specific timelines, and consistent operation within existing systems. The GAC also recommends applying best practices to Contracted Parties and stakeholder involvement in developing a GDPR Code of Conduct. Additionally, the minority statement supports the publication of pseudonymized email addresses with risk reduction measures.
Noncommercial Stakeholder Group (NCSG)	The NCSG expresses dissatisfaction with the lengthy and challenging EPDP. It emphasizes the importance of registrants' rights and calls for clarity on ICANN's role as a data controller. The minority statement opposes modifying the work based on potential regulations and argues against mandating the distinction between legal and natural persons. The NCSG advocates for Contracted Parties' freedom to manage customer information and highlight the rights of gig workers and independent artists.
Registrar Stakeholder Group (RrSG)	The RrSG emphasizes the importance of allowing registrars to determine their own risk level and feasibility. It expresses disappointment with the lengthy discussions and out-of-scope topics in the EPDP-TempSpec Phase 2A. The RrSG opposes mandatory policy obligations and supports optional differentiation and the use of registrant-based or registration-based email addresses. It asserts the need for individual registrar control and encourages review of legal guidance on publishing unique contacts.
Registries Stakeholder Group (RySG)	The RySG expresses its satisfaction with the resolution of the EPDP-TempSpec. It appreciates the efforts of everyone involved in reaching consensus on complex data protection issues. The RySG believes that the EPDP-TempSpec has achieved a balance between privacy rights, legal obligations, and operational efficiency for their customers and businesses. It emphasizes that the legal vs. natural differentiation issue has been resolved and that maintaining the option for differentiation is a positive outcome. The RySG trusts the GNSO process to determine the need for future policy development and also raises concerns about recommendations that go beyond the scope of the EPDP-TempSpec. It also highlights the insufficiency

	of the guidance provided on legal vs. natural differentiation.
Security and Stability Advisory Committee (SSAC)	The SSAC believes it is crucial for security investigators to access domain name registration data while also ensuring protection for those who need it. It recommends focusing on building and operating an effective differentiated access system that is timely, reliable, useful, efficient, and easily accessed. The SSAC also suggests defining the legal status of registrants and allowing public availability of certain data. Additionally, it proposes exploring pseudonymous email contacts with appropriate safeguards. The SSAC emphasizes the need to achieve a balance that benefits all stakeholders and encourages the ICANN community to prioritize the development of an effective SSAD.

REQUIRED LISTENING

Please watch or listen to the [23 September 2021 GNSO Council meeting](#) discussing EPDP-TempSpec Phase 2A.

Begin: 18:40 minutes into recording
End: 43:00 minutes into recording

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4.   Conclusion

In conclusion, Module 3 has provided an overview of how the policy deliberations proceeded during Phase 2 and Phase 2A of the EPDP on the Temporary Specification for gTLD Registration Data and the policy recommendations made by the EPDP-TempSpec team. These policy recommendations will form the basis of the new Registration Data Policy and how ICANN will begin to plan for a new system for standardized access/disclosure. Module 3 dove deeper into the insights of multiple ICANN community groups involved in the EPDP-TempSpec, including the inputs of three advisory committees and the minority statements submitted to each report. By delving into the intricacies of consensus-based policy development and comparing the policy outcomes with the competing perspectives, participants should begin to understand how to analyze and approach a policy topic from multiple perspectives.

5.   Acknowledgements

This report is a collaborative effort authored by the following individuals:

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