

**Notes from EPDP HIT Session - 25 June 2018**

**EPDP Team Membership Criteria and Composition. Lead: Keith Drazek**

<b>Comments</b>	<b>From</b>
Does composition need to be sensitive how policy recommendations are implemented, or only focused on policy? Response provided: will depend on the scope of the work as it may impact the work and need to focus on implementation. If work focuses on temp spec only, there may be less need for implementation related considerations as the temp spec is already implemented.	Steve DelBianco (BC)
Also needs to be a commitment to work – able to put in hours for the span of the projected timeline. Response provided: it could take up to 30 hours a week to undertake this effort. Need to be prepared to roll up sleeves – no time for catch up.	John Laprise
Have you considered the range of sizes of the groups that you consider viable to work in this timeframe? Response provided: small enough to be manageable, no decision taken yet.	Alan Greenberg
Is there a specific skill set or expertise that the EPDP should have? Specific knowledge can be provided to those coming into this team. Should not be up to one stakeholder group to educate others. Response provided: do not want to put up barriers to participation, looking into providing common knowledge base and direct to other sources.	Kathy Kleiman
Is there a way to include in the composition so that GAC input is provided so that the process is not delayed? Response provided: important to have all perspectives represented and input is provided at early stage.	Anne Eickman Scalese

<p>Expectation that members would be pulled from more experienced members from the different groups. How are we going to prioritize this work over other activities noting the effort that is involved. Could consider being more flexible so that there is no siloed members appointed (e.g. individuals may participate in different groups some in voting and others in non-voting capacity). Response provided: this has to be a priority for the GNSO Council. Has an obligation as a result of the Adoption of the temporary specification. Need to be cognizant of</p>	<p>Lori Schulman</p>
<p>membership of the EPDP has to be limited so that it can finish its work on time</p>	<p>Farzaneh Badii</p>
<p>I hope the council will ensure the range of whois users / those interests are represented</p>	<p>Victory Schlecker</p>
<p>The composition should be balanced and include representation from GAC and PSWG, with a team of about 5 people</p>	<p>Jorge Cancio</p>
<p>Ensuring "a back bench" as Keith put is is key - given the time and effort (and speed) that will be required.</p>	<p>Alex Deacon</p>
<p>I hope the council will ensure the range of whois users / those interests are represented</p>	<p>Victoria Sheckler</p>
<p>Membership of the EPDP has to be limited so that it can finish its work on time</p>	<p>Farzaneh Badii</p>

**EPDP Team Leadership. Lead: Paul McGrady**

<p><b>Comments</b></p>	<p><b>From</b></p>
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<p>The Council ought to designate the chairs as opposed to the group picking. They should be in addition to the appointees. This should be an individual skilled in delivering very specific results – perhaps from a drafting team.</p>	<p>Steve Delbianco</p>
<p>The Council has to appoint, and this individual needs to have proven skills and meet time commitments. If there were a chair, that is a full-time job. If you have vice or co-chairs, perhaps you can soften the time commitment instead of having the burden on one person.</p>	<p>Alan Greenberg</p>
<p>One fault that springs to mind – to chair something contentious like WHOIS, it will be difficult to find someone who doesn't have skin in the game. Perhaps this is the opportunity to have an independent facilitator, since this is a full-time job.</p>	<p>Michele Neylon</p>
<p>Have a possible pool of candidates from previous board members – this group had to have independence in the ICANN process at some point in their career. This may be less contentious than having it come from the Council.</p>	<p>Elliott Noss</p>
<p>It seems that an independent facilitator would be the best for this process.</p>	<p>Renata - NCUC</p>
<p>The chair of the group should work collectively collegially with full collaboration and complete independence. The chair must have expertise on how the PDP is prepared and must have expertise in the subject matter.</p>	<p>Kavouss Arasteh</p>
<p>Support for 1 neutral chair, as Elliot suggested a former board member or someone the community likes. this group can't get too big and unwieldy</p>	<p>Farzaneh Badii</p>
<p>Maybe two former Board members can Co-Chair?</p>	<p>Anne Aikman-Scalese</p>
<p>A shared leadership from the interested SO/ACs would help</p>	<p>Jorge Cancio</p>

<p>I disagree with comparing this group to WT5. there is time constraint, number of participants should be balanced but constrained.</p>	<p>Farzaneh Badii</p>
<p>I support appointing a neutral chair who is not a participant, I don't support having representative of groups as co-chairs, we don't need too many co-chairs it has to be a limited size group so cant have 5 co chairs</p>	<p>Farzaneh Badii</p>
<p>Given that regular members might be looking at 30 hr/week commitment; perhaps make space for associate members 15 hr/week.</p>	<p>John Laprise</p>
<p>Not so sure complete independence is required for the chair, if we believe in the multistakeholder model we have, we shouldn't be overly considered. we will have SOIs etc. not against having "independent facilitator/moderator" but I wonder if that cannot be served by ICANN staff or if that's of concern, then I think Elliott's suggestion of drawing on ex-board members (and perhaps ex council members in the same concept) could work.</p>	<p>Edmon</p>

**Scope. Lead: Susan Kawaguchi**

<p><b>Comments</b></p>	<p><b>From</b></p>
<p>Accreditation should not be discussed in ePDP. access can be discussed at a later stage.</p>	<p>Farzaneh Badii</p>
<p>The EPDP should not be used as a tool to reopen a previously explored policy issue only because a constituency or stakeholder group was not satisfied with the outcome of a previously held process on the same policy issue, unless the circumstances have changed and/or new information is available.</p>	<p>Michael Graham</p>

<p>Access and accreditation could be included as part of the temp spec but sooner or later it would need to go into a PDP.</p>	<p>Jorge Cancio</p>
<p>If you are able to land this EPDP within this tight frame with its current scope, it would be very impressive. If you add something like tiered access, it would make it basically impossible. However, tiered access exists right now, is available from most/many registrars. Does need to be improved taking into account use cases and experiences. Tiered access will be a moving target – registrars do not have the luxury of not offering it. Need to work together live in the field while the policy work is going on. Urge Council to give market a chance to be successful.</p>	<p>Elliott Noss</p>
<p>SSAC made several recommendations in SAC 101 that included inputs to the EPDP. These will be sent to the GNSO.</p>	<p>Rod Rasmussen</p>
<p>Temp Spec includes a requirement that users with legitimate and proportionate purpose for accessing data will be able to do so. It will be challenging but you have to do so. See also the unified access model that was published by ICANN Org last week. Should be included in the scope as it is part of the temp spec.</p>	<p>Steve DelBianco</p>
<p>Need to narrow scope to just the temp spec and make sure to get that done within the timeframe that is available. Put other issues such as access on a separate track which would be informed over time by the input from DPAs as well as court cases ongoing.</p>	<p>James Bladel</p>
<p>The reason why WHOIS exists is so that it can be accessed. So if we are doing something useful that does not include access, it would be an absurd fallacy.</p>	<p>Greg Shatan</p>
<p>Concerned that user perspective is lost. If there is not going in the EPDP, is there a commitment to move forward with access and accreditation sooner rather than later and is there a ability to, in a good and constructive way with a deliverable</p>	<p>Ashley Heinemann</p>

to work on the issue in parallel and that could include a new temporary specification.	
You cannot completely ignore the access question, but it would need to be done in parallel, maybe led partially by staff to put proposals out for comment. EPDP could tackle principles or characteristics.	Alan Greenberg
our experience to date has been that most of the requests we've made for access to nonpublic whois data have been ignored or rejected. Given this, there must be some assurances of reasonable access in the EPDP.	Victoria Sheckler
could the epdp simply approve the temporary specification? (I understand that many would be unhappy with this outcome) Could the epdp approve the temporary specification with the caveat demand that it is an interim approval only with a further pdp, potentially acknowledging and involving relevant existing pdps, to be drafted and submitted in the future?	John Laprise
Agree it is a good idea for GAC to work on tiered access - not wait for the EPDP. The reason is that many of the issues of access involve public policy in relation to GAC Public Safety Working Group and other public policy issues., including Privacy of citizens.	Anne Aikman-Scalese (IPC)
GAC should only work on law enforcement access to WHOIS data. It is not the authority to discuss any other access	Farzaneh Badii
There is no urgency for coming up with an accreditation model. Access can be handled by GNSO	Farzaneh Badii

Decision-making methodology. Lead: Rubens Kuhl

<b>Comments</b>	<b>From</b>
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<p>Is there any thought being given to a failsafe? There is a real possibility that there will be no consensus.</p>	<p>Mark D. (BC)</p>
<p>I don't think you need to deviate from your decision-making procedures. We're already deviating from standard PDP by doing an EPDP. There is nothing particularly special about the EPDP other than the need for speed, but the need for speed should not change the decision-making procedure.</p>	<p>Milton Mueller</p>
<p>Perhaps it would be more advisable to have the team decide on its decision-making methodology, but once they decide on it, they should not change it.</p>	<p>Kavouss Arasteh</p>
<p>I think there is danger in changing the standard decision-making procedures. There should be plenty of information about the decision-making process. Every step of the PDP should be well-documented due to the speed of the PDP.</p>	<p>Renata - NCUC</p>
<p>As a former vice-chair for the GNSO Policy and Implementation Working Group, I just wanted to remind the group that the PDP manual with a few exceptions would apply to ePDPs, so this question has been answered.</p>	<p>Michael Graham - IPC</p>
<p>hmm if we change the decision-making methodology, is it still a "PDP"? :-P, might as well call it an expedited community discussion outcomes to avoid the "PDP" terminology :-P... if decision making process needs to be made... then go back to change the process itself, which i guess it can be changed in a defined process?</p>	<p>Edmon Chung</p>

Status Reporting. Lead: Darcy Southwell

<p><b>Comments</b></p>	<p><b>From</b></p>
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Well we had the reporting requirement for ccwg accountability and the timeline etc worked well. you can use that	Farzaneh Badii
The status reports prepared by staff for the RDS PDP were excellent. I suggest we leverage that process/model and perhaps decide to increase from monthly to at least 2 times per month	Alex Deacon
Primary concern is to removing barriers to team to do its job. Frequent reports may slow down the work of the team so that needs to be considered. Staff the chair with a reporter who can take away this administrative burden. Chair could have a mediator and/or facilitator on their 'staff'.	Kurt Pritz
Need to make sure that people know what is going on. Consider changing this heading to communication. Various angles – from Org to Team, from Board to Team, from Team to the broader community.	Michele Neylon
As there is a hard timeline, one element of reporting may just focus on compliance with the timeline. Would give others not involved an idea of whether deliberations are on track.	John Laprise
Role of the Council liaison – there is a four months framework for the substantive work to be done. Role of liaison is important, especially when things go off the rails as there would be a need for quick course correction if that would occur. As such role of liaison will be important to identify any issues that may compromise the timeframe.	Donna Austin

**Problem/Issue Escalation & Resolution Processes. Lead: Stephanie Perrin.**

<b>Comments</b>	<b>From</b>
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<p>There is something in the PDP guidelines where a WG member could stop the work of a PDP, and I assume we would override that capability completely. (Look at 3.7 and take it off the table)</p>	<p>Steve Delbianco</p>
<p>We need independent third party GDPR counsel. they can clarify things in case of conflict.</p>	<p>Farzaneh Badii</p>
<p>In RDS PDP, we had some members who were intentionally confrontational and this led to a devolution of dialogue. The issue we have had here is how do you enforce the standards of behavior whilst balancing cultural differences and different expected norms, but we need to be conscious of this.</p>	<p>Michele Neylon</p>
<p>The leadership that is selected is very important and the composition of the group – be sure that people they are putting forward are going to work toward a consensus rather than grandstanding.</p>	<p>Michael Graham, IPC</p>
<p>Second Michele's comment.</p>	<p>??? NCUC</p>
<p>Suggest involving ombudsmen from the get go.</p>	<p>John Laprise</p>
<p>I will be available at any occasion to assist the Working Group.</p>	<p>Herb Waye</p>
<p>Involving the EU DPAs in this work is really key, as they are the closest to be an authoritative source of GDPR interpretation</p>	<p>Jorge Cancio</p>
<p>The dispute resolution be accessible – and if there is a process to escalate concerns about this, it will be better from the get-go.</p>	<p>Steve Delbianco</p>
<p>I see this sort of process and actions giving the authority and power to the chair to restrict disruptive participants.</p>	<p>Kavouss Arasteh</p>

Dispute resolution process should not intervene with the progress of the group. GAC can invite DPAs to guide them on law enforcement access to WHOIS. I don't find ADR an effective mechanism for resolving conflicts. It's a consensus process, we need to suggest alternatives and come up with suggestions to solve the issue.	Farzaneh Badii
We need independent third party GDPR counsel. they can clarify things in case of conflict.	Farzaneh Badii
involving the EU DPAs in this work is really key, as they are the closest to be an authoritative source of GDPR interpretation	Jorge Cancio (GAC Switzerland)
dispute resolution process should not intervene with the progress of the group	Farzaneh Badii
GAC can invite DPAs to guide them on law enforcement access to WHOIS.	Farzaneh Badii

**Other issues. Lead: Rafik Dammak**

<b>Comments</b>	<b>From</b>
Participants should be timed and intervention should be short/2 mins max.	Farzaneh Badii
We need budget set aside for neutral independent GDPR lawyers	Farzaneh Badii
In looking at tiered access from a public policy point of view, the report of the Expert Working Group (EWG) on WHOIS is a helpful document.	Anne Aikman-Scalese

<p>We can't train and teach people to come to consensus within a year, we can tell them legal facts etc., and come to a compromise. Need an independent GDPR counsel</p>	<p>Farzaneh Badii</p>
<p>The best legal advice will ultimately be a plan approved by the DPAs as an Industry Code of Conduct.</p>	<p>Anne Aikman-Scalese</p>
<p>Involving the EU DPAs would probably be cheaper than having two law firms.</p>	<p>Jorge Cancio</p>
<p>Strongly advocate F2F meetings. Makes compromise a lot easier, infinitely more effectively. But costs may be substantial – 200,000 USD. What commitment exists from the Board to fund this?</p>	<p>Alan Greenberg</p>
<p>Because this is triggered by the GDRP, are legal resources needed to answer some questions?</p>	<p>Edmon Chung</p>
<p>One of the challenges is that the temp spec that it needs to be confirmed every 90 days. There is a possibility that temp spec could change at that juncture. Could be decisions from DPAs that could have an impact. Important for Council to provide guidance in the charter about how to deal with those 90 day decision points if there is a substantive change to the temp spec.</p>	<p>Donna Austin</p>
<p>Board is aware that this effort will require resources, although no blank cheques will be written. Need to hear from the Council what is needed, following the budget discipline that has been implemented for example for WS2.</p>	<p>Becky Burr</p>
<p>There may be a case to consider having a liaison from the European Data Protection Board to the EPDP.</p>	<p>Rahul</p>
<p>Not necessary to have an on call legal counsel, but may need to have the ability to submit legal question and get a reply in a day from an authority who understands European law.</p>	<p>Steve DelBianco</p>

<p>May need to bring in independent professional mediators or somebody schooled in consensus building. Different independent tool sets may be required.</p>	<p>Kurt Pritz</p>
<p>Legal expertise is important matter. Could be in the form of external expertise. Would be helpful to from the very beginning that there is an external expertise on legal matters who would be addressing the team on a regular basis.</p>	<p>??</p>
<p>Idea of getting legal expertise is a good one, but there is a broad diversity of interpretations in this area of law. May need two law firms that disagree with each other although not clear where that would leave the team. Client needs to ask how to ask for advice. Need wise counsel but not ad-hoc litigation.</p>	<p>Greg Shatan</p>