Notes from HIT on EPDP

Team Composition:

- Does the team need to include someone with expertise in implementation? The timeline doesn't include implementation.
- In addition to "commitment to compromise", needs to be "commitment to work" given the quick pace.
- Have we considered the range of sizes to be viable to be effective?
- Specific expertise we can give on GDPR to all members of the team. Everyone should have a common baseline. Many good courses on this. Shouldn't be up to one stakeholder group to educate everyone.
- Is there a way to get GAC input along the way to ensure the process isn't delayed?
- How will this work stack up against the 3 other PDPs already underway? How will the community prioritise this work?
- Can we be more flexible and not appoint on the basis of SG/C? Mistake to stick to the silos.

EPDP Leadership:

- Council should designate rather than the team, and it should be in addition to the membership. Needs to be someone with tremendous experience in delivering highly technical results. Previous leadership, not just PDPs but other efforts. Lots of talent to choose Chair/Co-Chairs from.
- Council must appoint, and Chair/s must have proven skills. No preference as to Chair/Co-Chair/Vice Chairs. They must keep things on track and meet time commitments. Chair must be able to commit to a full-time job, perhaps softened by Co/Vice Chairs. Should not be a member of the team, as this would disadvantage the appointing body.
- Very hard to find someone who doesn't have skin in the game. Opportunity to utilise the idea of an independent facilitator, make this the person's full time job. Would have to find an employer willing to give up the employee for 6 months. Not many employers are willing to do so, and those who are willing have significant skin in the game. Find someone who understands the ICANN environment.
- Consider previous Board members; lots of experience, likely to have independence and understanding of the ICANN process. Potentially less contentious alternative.
- Concerned about diversity. An independent facilitator would be the best choice for the process.
- Chairs should work collectively, collegially, full collaboration, and with complete independence. The Chair must have expertise on how the PDP is developed and not on the subject matter. Subject is very sensitive, difficult and complex. Neutrality must be irrespective of affiliation.

Scope

- Tiered access: included or not? If we are able to complete the PDP in the tight timeframe with its current scope. Adding something as difficult as tiered access would make this impossible. Not only Council but everybody understands that tiered access exists now and is available from most/many registries, but needs to be improved by taking into consideration the various use cases and interests. Tiered access is going to be a necessity, not a luxury. Improvements must happen live while the EPDP is going on.
- SSAC made several recommendations (SSAC101), note to GNSO forthcoming.

- Temporary Spec includes a requirement for legitimate access; will be challenging, but this is what the temp spec addresses so must be in scope. UAM parallel path complements the PDP. Two-track process where ICANN Org does work at the same time.
- Important if not existential to narrow the scope to just the temp spec. Access is an important topic, but RDS PDP has failed to address those questions in years. Risk is reaching May 2019 with no PDP output. Put access on a separate track, with benefit of informing that work, informed by court cases. Scope must be as narrow as possible.
- WHOIS exists in order to be accessed. Database exists now. Building policy that doesn't include access is not logical.
- Sympathetic to all the issues to be addressed. Concerned that WHOIS user perspective is completely lost. If it's not going to be in the EPDP is there a commitment to deal with access and accreditation sooner rather than later, and to work on this issue in parallel (including via a new temp spec).
- Can't do the EPDP completely ignoring accreditation model, it is a core part of the temporary specification and absolutely necessary for this to work in a reasonable way. To sort out the fine details is not possible in the timeline. May gain wisdom during the EPDP on exactly how an accreditation model should be implemented or what characteristics it has.

Decision-making methodology:

- Is there any thought given to a fail-safe – real possibility that the group will not reach consensus. Has the community given any thought to that scenario?
- No need to deviate from existing decision-making procedures. Already deviating from existing process by undertaking an EPDP. These processes are in place to develop process in a fair and balanced way. Not a good idea to change the processes. The need for speed does not change the way consensus should be determined. Existing criteria are perfectly valid.
- Given the scope of the subject, let the team decide rather than a predetermined way of decision-making.
- Process should not be changed, doing so would be dangerous because this is an expedited process. There should be lots of information about the decision-making process. Every step should be well documented.
- PDP Manual with few exceptions should apply to EPDPs. Go back to that document.

Status reporting:

- Primary concern is to remove barriers from the team doing its job. Staff reporter can make frequent reports but not slow down the team or stop its deliberations. Staff the chair with a reporter to relieve Chair of administrative burden.
- Reframe "status reporting" as "communication"
- Important to note whether we are on/off schedule.
- Liaison role is important given the 4 month timeframe for substantive work. Liaison has important role of reporting back to Council if the EPDP requires course correction. Liaison must identify issues they feel will impede the group.

Problem/issue resolution:

- Make sure processes ensure the process can't be obstructed. Take 3.7 off the table to have a chance of succeeding. Ability to stop the process would be destructive.

- RDS PDP had intentionally confrontational members. How to enforce standards of behaviour and balance with cultural and other norms? If people come in with an aggressive, confrontational manner, the group will not succeed.
- Less important to come up with a modified approach, more important to select leadership carefully and ensure composition of the group is able to work towards consensus.
- Leadership should not be exempt from escalation procedures.
- Involve ombuds from the get-go as a preventative measure.
- Ombudsman is available to assist the WG as in past assistance. Willing to act as a resource for mediation or independent outsider looking at a dispute. Happy to attend meeting as an observer to step in when things become contentious.
- Dispute resolution needs to be available or easily accessible if leadership determines that a group member is not honouring membership commitments. Process to escalate will enable members to take things more seriously.
- Giving Chair power to restrict disruptive participants is unacceptable due to the complexity of the system. Don't put any restrictions, or give any authority to the chair, or it will have no process at all. Totally unacceptable.

Other issues:

- Strongly advocate face to face meetings, more effective, compromise easier than on teleconferences. Significant costs ($200K). What kind of commitment do we have from the Board to fund this?
- Legal resources to answer questions?
- Temp Spec needs to be confirmed every 90 days; possibility that it may be changed at that point as well. Decisions from DPAs may have an impact on the Team's work as well. How to deal with 90 day points if there are substantive changes to the Temporary Specification? Important that Council provides guidance on this in its charter. What mechanisms can we put in place to deal with this?
- Board is aware that this effort will require resources; not writing a blank cheque but resources will be made available following budgeting discipline as per WS2. No question as to commitment to supporting the work.
- Additional resources – consider liaison from European Data Protection Board on the EPDP. Serves the dual requirement of them having to communicate with the EPDP.
- As part of CCWG-IANA Transition, very expensive at ready legal team answering questions. Not necessary here, but ability to submit questions to an authority on European law and get a response in a day will be very helpful.
- External legal advice is important, depends on how the group operates (every week, every 3 days, etc).
- Legal advice is a good idea but there is a broad diversity of interpretations in this area of law, might be better to get 2 sources of legal advice. Can only go so far with completely objective legal advice. How we get advice depends on the client (has to know how to ask for advice): how do I accomplish my intent? Important for group to decide what it is intending to accomplish, and then get legal advice on that.