

# ICANN | GNSO

Generic Names Supporting Organization

**Team Name:** Temporary Specification for gTLD Registration Data Expedited Policy Development Process Team (Temp Spec gTLD RD EPDP Team)

## Section I: Team Identification

**Chartering Organization(s):** Generic Names Supporting Organization (GNSO) Council

**Charter Approval Date:** 19 July 2018

**Name of Team Chair/Co-Chairs:** Kurt Pritz

**Name(s) of Appointed Council Liaison(s):** Rafik Dammak

**Team Workspace URL:** <https://community.icann.org/x/IYEpBQ>

**Team Mailing List:** [gnso-epdp-team@icann.org](mailto:gnso-epdp-team@icann.org)

**GNSO Council Resolution:**

<b>Title:</b>	Motion to Approve the Charter for the Temporary Specification for gTLD Registration Data EPDP Team
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<b>Ref # &amp; Link:</b>	20180719-2 <a href="https://gnso.icann.org/en/council/resolutions#20180719-2">https://gnso.icann.org/en/council/resolutions#20180719-2</a>
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**Important Document Links:**

- [EPDP Initiation Request](#)
- [Temporary Specification for gTLD Registration Data](#)
- [Annex A-1 GNSO Expedited Policy Development Process of the ICANN Bylaws](#)
- [Expedited GNSO PDP Manual](#)
- [GNSO Working Group Guidelines](#)

## Section II: Mission, Purpose, and Deliverables

**Mission & Scope:**

## **Background**

On 17 May 2018, the ICANN Board of Directors (ICANN Board) adopted the Temporary Specification for generic top-level domain (gTLD) Registration Data (“Temporary Specification”) pursuant to the procedures for the establishment of temporary policies in ICANN’s agreements with Registry Operators and Registrars (“Contracts”). The Temporary Specification provides modifications to existing requirements in the Registrar Accreditation and Registry Agreements to help bring them into compliance with the European Union’s General Data Protection Regulation (“GDPR”). Per the procedure for Temporary Policies as outlined in the Contracts, following adoption of the temporary specification, the Board “shall immediately implement the Consensus Policy development process set forth in ICANN’s Bylaws”. Per the requirements of the procedure for Temporary Policies, this Consensus Policy development process on the temporary specification would need to be carried out within a one-year period as the Temporary Specification can only remain in force for up to 1 year, from the effective date of 25 May 2018.

At its meeting on 19 July 2018, the GNSO Council initiated an Expedited Policy Development Process on the Temporary Specification for gTLD Registration Data and adopted this charter for the EPDP Team to deliberate the issues outlined below.

## **Mission and Scope**

This EPDP Team is being chartered to determine if the Temporary Specification for gTLD Registration Data should become an ICANN Consensus Policy, as is or with modifications, while complying with the GDPR and other relevant privacy and data protection law. As part of this determination, the EPDP Team is, at a minimum, expected to consider the following elements of the Temporary Specification and answer the following charter questions. The EPDP Team shall consider what subsidiary recommendations it might make for future work by the GNSO which might be necessary to ensure relevant Consensus Policies, including those related to registration data, are reassessed to become consistent with applicable law.

## Terms of the Temporary Specification

### Part 1: Purposes for Processing Registration Data

- a) Purposes outlined in Sec. 4.4.1-4.4.13 of the Temporary Specification:
- a1) Are the purposes enumerated in the Temporary Specification valid and legitimate?
  - a2) Do those purposes have a corresponding legal basis?
  - a3) Should any of the purposes be eliminated or adjusted?
  - a4) Should any purposes be added?

Note: Questions under a) are gating questions for the EPDP Team’s discussion of access, in that they must be answered before work on a standardized access model can commence. They are gating because establishing purposes will inform decisions about how personal data in registration data is processed. Because providing access to non-public Registration Data is a processing activity, there must be a legitimate purpose(s) with a

corresponding legal basis(es) established prior to granting such access. Further, as pointed out by the European Data Protection Board (“EDPB”) (letter from Jelinik to Marby, July 5, 2018), the EPDP Team should recognize the distinction between ICANN’s purposes for processing registration data, and the purposes which third parties may present to obtain the disclosure of data.

## Part 2: Required Data Processing Activities

### b) Collection of registration data by registrar:

- b1) What data should registrars be required to collect for each of the following contacts: Registrant, Tech, Admin, Billing?
- b2) What data is collected because it is necessary to deliver the service of fulfilling a domain registration, versus other legitimate purpose as outlined in part (A) above?
- b3) How shall legitimacy of collecting data be defined (at least for personal data collected from European registrants and others in jurisdictions with data protection law)?
- b4) Under the purposes identified in Section A, is there legal justification for collection of these data elements, or a legal reason why registrars should not continue to collect all data elements for each contact?

Note: Questions under b) are gating questions for the EPDP Team’s discussion of access, in that they must be answered before work on a standardized access model can commence. They are gating because the answers to these questions will establish a baseline set of data that is collected for each domain name registration, which will in turn inform what data is made public, as opposed to only made available to accredited users.

### c) Transfer of data from registrar to registry:

- c1) What data should registrars be required to transfer to the registry?
- c2) What data is required to fulfill the purpose of a registry registering and resolving a domain name?
- c3) What data is transferred to the registry because it is necessary to deliver the service of fulfilling a domain registration versus other legitimate purposes as outlined in part (a) above?
- c4) Is there a legal reason why registrars should not be required to transfer data to the registries, in accordance with previous consensus policy on this point?
- c5) Should registries have the option to require contact data or not?
- c6) Is there a valid purpose for the registrant contact data to be transferred to the registry, or should it continue to reside at the registrar?

Note: Questions under c) are gating for the EPDP Team’s discussion of access in that they must be answered before work on a standardized access model can commence. They are gating because the answers to these questions will determine which parties hold all registration data (thick WHOIS), and therefore are able to provide access to that data.

### d) Transfer of data from registrar/registry to data escrow provider:

- d1) Should there be any changes made to the policy requiring registries and registrars to transfer the data that they process to the data escrow provider?

d2) Should there be any changes made to the procedures for transfer of data from a data escrow provider to ICANN Org?

e) Transfer of data from registrar/registry to ICANN:

e1) Should there be any changes made to the policy requiring registries and registrars to transfer the domain name registration data that they process to ICANN Compliance, when required/requested?

f) Publication of data by registrar/registry:

f1) Should there be any changes made to registrant data that is required to be redacted? If so, what data should be published in a freely accessible directory?

f2) Should standardized requirements on registrant contact mechanism be developed?

f3) Under what circumstances should third parties be permitted to contact the registrant, and how should contact be facilitated in those circumstances?

Note: Questions under f) are gating for the EPDP Team's discussion of access in that they must be answered before work on a standardized access model can commence. They are gating because the answers to these questions will determine what data is made available through a public Registration Data Directory Service (RDDS) record, as opposed to only made available to accredited users.

g) Data retention:

g1) Should adjustments be made to the data retention requirement (life of the registration + 2 years)?

g2) If not, are changes to the waiver process necessary?

g3) In light of the EDPB letter of 5 July 2018, what is the justification for retaining registration data beyond the term of the domain name registration?

h) Applicability of Data Processing Requirements

h1) Should Registry Operators and Registrars ("Contracted Parties") be permitted or required to differentiate between registrants on a geographic basis?

h2) Is there a legal basis for Contracted Parties to differentiate between registrants on a geographic basis?

h3) Should Contracted Parties be allowed or required to treat legal and natural persons differently, and what mechanism is needed to ensure reliable determination of status?

h4) Is there a legal basis for Contracted Parties to treat legal and natural persons differently?

h5) What are the risks associated with differentiation of registrant status as legal or natural persons across multiple jurisdictions? (See EDPB letter of 5 July 2018).

i) Transfer of data from registry to Emergency Back End Registry Operator ("EBERO")

i1) Consider that in most EBERO transition scenarios, no data is actually transferred from a registry to an EBERO. Should this data processing activity be eliminated or adjusted?

j). Temporary Specification and Reasonable Access

j1) Should existing requirements in the Temporary Specification remain in place until a model for access

is finalized?

A. If so:

1. Under Section 4 of Appendix A of the Temporary Specification, what is meant by “reasonable access” to Non-Public data?
2. What criteria must Contracted Parties be obligated to consider in deciding whether to disclose non-public Registration data to an outside party requestor (i.e. whether or not the legitimate interest of the outside party seeking disclosure are overridden by the interests or fundamental rights or freedoms of the registrant)?

B. If not:

1. What framework(s) for disclosure could be used to address (i) issues involving abuse of domain name registrations, including but not limited to consumer protection, investigation of cybercrime, DNS abuse and intellectual property protection, (ii) addressing appropriate law enforcement needs, and (iii) provide access to registration data based on legitimate interests not outweighed by the fundamental rights of relevant data subjects?

j2) Can the obligation to provide “reasonable access” be further clarified and/or better defined through the implementation of a community-wide model for access or similar framework which takes into account at least the following elements:

1. What outside parties / classes of outside parties, and types of uses of non-public Registration Data by such parties, fall within legitimate purposes and legal basis for such use?
2. Should such outside parties / classes of outside parties be vetted by ICANN in some manner and if so, how?
3. If the parties should not be vetted by ICANN, who should vet such parties?
4. In addition to vetting the parties, either by ICANN or by some other body or bodies, what other safeguards should be considered to ensure disclosure of Non-Public Personal Data is not abused?

Part 3: Data Processing Terms -- To be concluded during the initial stage of the EPDP work, as part of the Temporary Specification review and initial report.

k) ICANN's responsibilities in processing data

k1) For which data processing activities undertaken by registrars and registries as required by the Temporary Specification does ICANN determine the purpose and means of processing?

k2) In addition to any specific duties ICANN may have as data controller, what other obligations should be noted by this EPDP Team, including any duties to registrants that are unique and specific to ICANN's role as the administrator of policies and contracts governing gTLD domain names?

l) Registrar's responsibilities in processing data

l1) For which data processing activities required by the Temporary Specification does the registrar determine the purpose and means of processing?

l2) Identify a data controller and data processor for each type of data.

l3) Which registrant data processing activities required by the Temporary Specification do registrars undertake solely at ICANN's direction?

l4) What are the registrar's responsibilities to the data subject with respect to data processing activities

that are under ICANN's control?

- m) Registry's responsibilities in processing data
  - m1) For which data processing activities required by the Temporary Specification does the registry determine the purpose and means of processing?
  - m2) Which data processing activities required by the Temporary Specification does the registry undertake solely at ICANN's direction?
  - m3) Are there processing activities that registries may optionally pursue?
  - m4) What are the registry's responsibilities to the data subject based on the above?

#### Part 4: Updates to Other Consensus Policies

- n) URS
  - n1) Should Temporary Specification language be confirmed, or are additional adjustments needed?
- o) UDRP
  - o1) Should Temporary Specification language be confirmed, or are additional adjustments needed?
- p) Transfer Policy
  - p1) Should Temporary Specification language be confirmed or modified until a dedicated PDP can revisit the current transfer policy?
  - p2) If so, which language should be confirmed, the one based on RDAP or the one based in current WHOIS?
- q) Sunsetting WHOIS Contractual Requirements
  - q1) After migration to RDAP, when can requirements in the Contracts to use WHOIS protocol be eliminated?
  - q2) If EPDP Team's decision includes a replacement directory access protocol, such as RDAP, when can requirements in the Contracts to use WHOIS protocol be eliminated?

#### System for Standardized Access to Non-Public Registration Data

Work on this topic shall begin once the gating questions above have been answered and finalized in preparation for the Temporary Specification initial report. The threshold for establishing "answered" for the gating questions shall be consensus of the EPDP Team and non-objection by the GNSO Council.

- (a) Purposes for Accessing Data – What are the unanswered policy questions that will guide implementation?
  - a1) Under applicable law, what are legitimate purposes for third parties to access registration data?
  - a2) What legal bases exist to support this access?
  - a3) What are the eligibility criteria for access to non-public Registration data?
  - a4) Do those parties/groups consist of different types of third-party requestors?
  - a5) What data elements should each user/party have access to based on their purposes?

a6) To what extent can we determine a set of data elements and potential scope (volume) for specific third parties and/or purposes?

a7) How can RDAP, that is technically capable, allow Registries/Registrars to accept accreditation tokens and purpose for the query? Once accreditation models are developed by the appropriate accreditors and approved by the relevant legal authorities, how can we ensure that RDAP is technically capable and is ready to accept, log and respond to the accredited requestor's token?

(b) Credentialing – What are the unanswered policy questions that will guide implementation?

b1) How will credentials be granted and managed?

b2) Who is responsible for providing credentials?

b3) How will these credentials be integrated into registrars'/registries' technical systems?

(c) Terms of access and compliance with terms of use – What are the unanswered policy questions that will guide implementation?

c1) What rules/policies will govern users' access to the data?

c2) What rules/policies will govern users' use of the data once accessed?

c3) Who will be responsible for establishing and enforcing these rules/policies?

c4) What, if any, sanctions or penalties will a user face for abusing the data, including future restrictions on access or compensation to data subjects whose data has been abused in addition to any sanctions already provided in applicable law?

c5) What kinds of insights will Contracted Parties have into what data is accessed and how it is used?

c6) What rights do data subjects have in ascertaining when and how their data is accessed and used?

c7) How can a third party access model accommodate differing requirements for data subject notification of data disclosure?

#### Annex: Important Issues for Further Community Action

Following the EPDP Team's primary focus on confirming, amending, rejecting or replacing the Temporary Specification, and resolving the gating questions identified above, the EPDP Team shall turn its attention to the items included in the Temporary Specification Annex, listed as "Important Issues for Further Community Action." These include but are not limited to the standardized access model referenced above.

The EPDP Team should track any ongoing discussions as they relate to GDPR and its applicability in the ICANN context and potential impact on the Temporary Specification. It may also wish to consider forming sub-groups to work on issues or sub-topics in order to streamline its work and discussions, provided those sub-groups are subject to the gating questions.

The ICANN Board is required to reconfirm the Temporary Specification every 90 days from their adoption and enforcement of the Temporary Specification, for a period of no more than 12 months or upon the confirmation, or not, of the Temporary Specification as consensus policy--whichever event comes first. In the event that the ICANN Board, amends the Temporary Specification as part of the confirmation process, the EPDP Team will review the Charter for continued applicability. In the event that the EPDP Team determines that the Charter



requires amendment, the Chair of the EPDP Team will inform the GNSO Council of the recommended changes to the Charter and any impact on the timeline. Where the impact is considered substantive and expected to compromise the ability of the EPDP Team to meet published timelines the GNSO Council will discuss with the ICANN Board with a view to determining possible solutions for continuing the work.

### **Key Metric Considerations:**

*[Define the policy goals for the proposed policy change and the metrics that will measure the goals]*

- 1. Determine the policy goals for this exercise, within the parameters set by the Temporary Interim Specification.*
- 2. Identify potential policy goals that were omitted in the Temporary Specification and set aside for further Council deliberation.*
- 3. Determine a set of questions which, when answered, provide the insight necessary to achieve the policy goals.*
- 4. Determine the types of data that may assist the WG in better scoping the issues and identify whether it can be collected within the timeframe, and assemble or substitute information that can be analyzed to help answer each question.*
- 5. Determine a set of metrics which can be applied to the data, analysis, and achievement of policy objectives. Collect this data to the extent feasible, and determine a process for ongoing metric analysis and program evaluation to measure success of this policy process.*

*(The [Hints and Tips page](#) on the GNSO website contains more details on use of data and metrics.)*

### **Objectives & Goals:**

To develop, at a minimum, an Initial Report and a Final Report regarding the EPDP Team's recommendations on issues relating to the Temporary Specification for gTLD Registration Data as well as regarding the EPDP Team's recommendations for a System for Accredited Access to Non-Public Registration Data, pursuant to the processes described in Annex A and A-1 of the ICANN Bylaws and the GNSO Expedited PDP Manual. Work on recommendations for a System for Accredited Access to Non-Public Registration Data should not commence until all gating questions have been answered. Similarly, delivery of the Final Report on the EPDP Team's recommendations on issues relating to the Temporary Specification for gTLD Registration Data to the GNSO Council and subsequently the ICANN Board (before 25 May 2019) should not be held up by work that may still be ongoing in relation to the EPDP Team's recommendations for a System for Accredited Access to Non-Public Registration Data.

Upon publication for public comment, the Initial Reports should be submitted to the European Data Protection Board or other relevant DPAs to request feedback on the applicability of the law in relation to the proposed recommendations, particularly those that may carry over from Temporary Specification to Consensus Policy recommendations to the ICANN Board.

### **Deliverables & Timeframes:**

The first deliverable of the EPDP Team shall be a triage document of the Temporary Specification, which includes items that have the Full Consensus support of the EPDP Team that these should be adopted as is (with no further discussion or modifications needed). These items need to be:

- In the body of the Temporary Specification (not in the Annex)
- Within the "picket fence" (per limitations on Consensus Policy as set out in the Contracts)
- Not obviously in violation of the GDPR / Assumed to be compliant with GDPR [Presumed to be legal according to the members' best knowledge of GDPR]
- Consistent with ICANN's Bylaws

Deliberations of this first deliverable should include at least one round of elimination of clauses, if appropriate, and a second round of Full Consensus approval of a whole set of clauses.

The second deliverable shall be the Initial Report which will include the items that received Full Consensus support per the triage document as well as all other items of the Temporary Specification (not including the Annex) that were considered and deliberated upon, followed by a Final Report following review of public comments. Per the illustrative timeline below, this implies that the Initial Report on the items related to the Temporary Specification (excluding the Annex) is expected to be published for public comment shortly after ICANN63 (October 2018) and the Final Report delivered to the GNSO Council for its consideration by the end of January / beginning of February 2019.

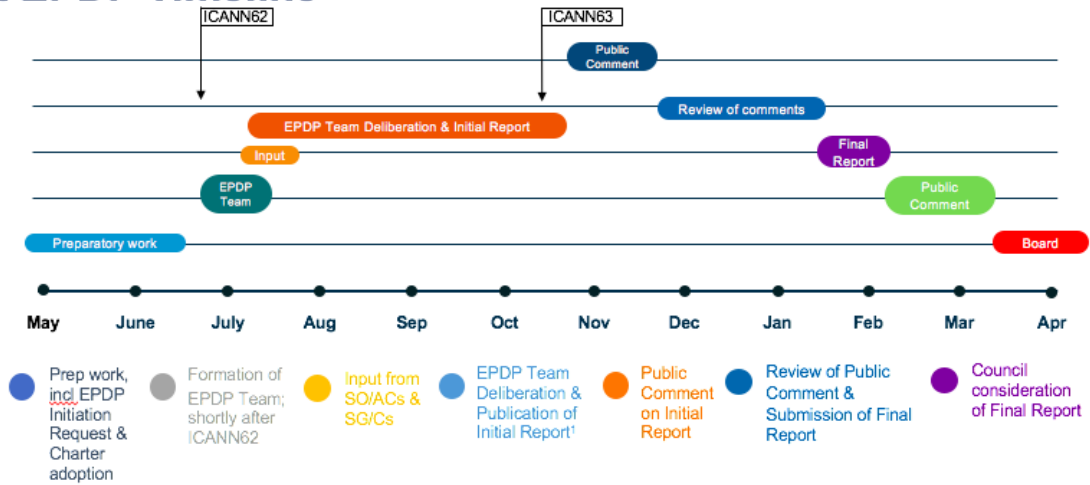
The third deliverable of the EPDP Team shall be an Initial Report outlining a proposed model of a system for providing accredited access to non-public Registration Data, followed by a Final Report following review of public comments.

The Team shall not commence work on the aforementioned third deliverable of an Initial Report outlining the proposed model of a system for providing accredited access to non-public Registration Data until all gating questions have been answered.

The EPDP Team shall respect the timelines and deliverables as outlined in Annex A and A-1 of the ICANN Bylaws and the EPDP Manual. As per the GNSO EPDP Working Group Guidelines, the EPDP Team shall develop a work plan that outlines the necessary steps and expected timing in order to achieve the milestones of the EPDP as set out in Annex A and A-1 of the ICANN Bylaws and the EPDP Manual and submit this to the GNSO Council. Any significant updates to the work plan are expected to be communicated in a timely manner to the GNSO Council with an explanation as to why the work plan needed adjustment.

Illustrative EPDP Timeline

## Draft EPDP Timeline



**To Summarize**  
 365 days available to carry out all required steps in an EPDP. Draft timeline assumes first meeting of EPDP at ICANN62 at the latest.

<sup>1</sup>The EPDP Team Deliberation and Initial Report contemplates dealing specifically with questions relating to the Temporary Specification. Once gating questions have been addressed, work will commence on the standardized access model. As such, work on the standardized access model is not currently reflected in this timeline.

## Section III: Formation, Staffing, and Organization

### Membership Criteria:

GNSO Stakeholder Groups and ACs/SOs appointing members to the EPDP Team should make reasonable efforts to ensure that the composite of individual Members:

- Possess a working/basic understanding of GDPR. All members must commit to participating in the training selected for the EPDP Team to ensure knowledge adequate to effectively participate in the EPDP.
- Be responsible to their appointing organization, seeking input as necessary and keeping the appointing organization informed of progress.
- Be knowledgeable of, and respect the, GNSO policy development process.
- Willing to work, in good faith, toward consensus solutions during the life of the EPDP, and treat other members of the Team with respect.
- Available to actively contribute to the activities of the EPDP on an ongoing basis, including during face-to-face meetings of the EPDP Team.
- Willing to adhere to the EPDP Team Statement of Participation.

### Group Formation, Dependencies, & Dissolution:

#### EPDP Team Structure

- GNSO Members are appointed by GNSO Stakeholder Groups (SG).
  - Each Contracted Party House Stakeholder Group (Registries SG and Registrars SG) may appoint up to 3 Members + 3 Alternates,
  - Each Non-Contracted Party House SG, namely the Commercial Stakeholder Group and the Non-Commercial Stakeholder Group, may appoint 6 Members + 3 Alternates (for the Commercial Stakeholder Group this is further broken down to 2 Members + 1 Alternate per Constituency).
- The ALAC, SSAC, RSSAC and ccNSO will be invited to appoint 2 members + 2 Alternates
- The GAC will be invited to appoint 3 members + 3 Alternates
- For the purpose of assessing level of consensus, Members are required to represent the formal position of their SG/C or SO/AC, not individual views or positions.
- Alternates will only participate if a Member is not available. Alternates will be responsible for keeping up with all relevant EPDP Team deliberations to ensure they remain informed and can contribute when needed.
- 2 ICANN Staff Liaisons (one from Legal, one from GDD)
- 2 ICANN Board Liaisons
- 1 GNSO Council Liaison
- 1 independent Chair (neutral, not counted as from the WG membership/participants)
- The EPDP Team may invite expert contributors and other resources as deemed necessary by the EPDP Team leadership.
- Anyone may join the EPDP Team as an observer. Observers would be subscribed to the EPDP Team mailing list on a read-only basis but are NOT able to post. Observers are NOT allowed to participate in EPDP Team meetings, however, real-time audio cast may be made available to follow deliberations in addition to transcriptions and recordings.
- Member participation is required for establishing consensus. If a member is not able to express a position on a consensus call, this will not hold up a consensus call if other members are able to express a position on behalf of their respective groups. Liaisons or observers do not participate in any type of consensus calls.
- For the purpose of assessing consensus, and in order to reflect and respect the current balance and bicameral structure of the GNSO Council, the Chair shall apply necessary and appropriate weight to the positions of the respective GNSO SG and Cs at Council level, noting that increased membership from the CSG and NCSG (6 members each) relative to the CPH (6 members in total) upsets that balance. The CPH, NCSG or any SG or C that does not fulfil its entire membership allowance must not be disadvantaged as a result during any assessment of consensus.

<b>GROUP</b>	<b>MEMBERS (up to)</b>	<b>ALTERNATES (up to)</b>	<b>LIAISONS (up to)</b>	<b>TOTAL MEMBERS + Liaisons (up to)</b>
RySG	3	3		3
RrSG	3	3		3
IPC	2	1		2

BC	2	1		2
ISPCP	2	1		2
NCSG	6	3		6
GAC	3	3		3
ALAC	2	2		2
SSAC	2	2		2
ccNSO	2	2		2
RSSAC	2	2		2
ICANN STAFF			2	2
ICANN BOARD			2	2
GNSO COUNCIL			1	1
EPDP CHAIR			1	1
TOTALS	29	23	6	35

The EPDP Team would be expected to make provisions as part of its work plan to provide regular updates to the broader ICANN community and others interested, for example, through newsletters and/or webinars.

Description of EPDP Team roles:

- **EPDP Team Members:** Members are expected to commit to the Statement of Participation as well as participate in any EPDP Team consensus calls, as applicable. Members are required to represent the formal position of their appointing organization, not individual views or positions.
- **EPDP Team Alternates:** Alternates are also expected to adhere to the Statement of Participation. An alternate will only participate if a Member is not available. Members and/or appointing organizations are expected to communicate in a timely manner to the EPDP Chair and/or the GNSO Secretariat the time period during which the alternate will replace a member. Alternates will be responsible for keeping up with all relevant EPDP WG deliberations to ensure they remain informed and can contribute

when needed (when the Member is not available). As such, alternates will be subscribed to the mailing list as observers (apart from any time periods during which the alternate will be replacing a member. During that period, the alternate will also have mailing list posting rights). As noted, the ability to listen in real-time is expected to be made available to facilitate this process.

- **EPDP Team Observers:** Anyone interested in this effort may join as an observer – observers are subscribed to the mailing list on a read-only basis but are NOT able to post. Similarly, observers are NOT invited to participate in EPDP Team meetings. The ability to listen in real-time as well as recordings / transcripts of meetings will be available to observers.
- **Board Liaison:** Board liaison(s) are expected to share on a regular basis any input the Board may have that will inform the EPDP team deliberations and ongoing work. Similarly, Board liaison(s) are expected to keep the Board informed concerning the status of the EPDP Team deliberations. The Board Liaison(s) are not expected to advocate for any position and/or participate in any EPDP Team consensus calls.
- **GNSO Council Liaison:** The GNSO Council shall appoint a liaison who is accountable to the GNSO. The liaison must be a member of the Council, and the Council recommends the liaison be a Council member able to serve during the life of this EPDP. Generally speaking, the liaison is expected to fulfill the liaison role in a neutral manner, monitor the discussions of the Working Group and assist/ inform the Chair and the EPDP Team as required.
- **ICANN Staff Liaison:** The ICANN Org GDD and Legal Liaisons are expected to provide timely input on issues that may require ICANN Org input such as implementation-related queries. The ICANN Staff Liaisons are not expected to advocate for any position and/or participate in any EPDP Team consensus calls.

## **EPDP Team Leadership**

### Selection of EPDP Team Leadership

The GNSO Council will appoint a qualified Chair for the EPDP. Below as Annex A is a description of the qualifications and role of the Chair for this EPDP.

The EPDP Team, once formed, will select one or two Vice Chairs to assist the Chair. Should at any point a Vice-Chair need to step into the role of Chair, the same expectations with regards to fulfilling the role of chair as outlined in this charter will apply.

Staff has published a request for Expressions of Interest for the role of Chair. The GNSO Council leadership and Standing Selection Committee leadership will jointly review the responses and will propose a Chair to the GNSO Council which will then either affirm the selection or reject the selection and send the process back to the GNSO Council leadership and Standing Selection Committee leadership.

The Expression of Interest should address the following issues:

- What is the applicant's interest in this position?
- What particular skills and attributes does the applicant have that will assist him/her in chairing the EPDP?
- What is applicant's knowledge of the Temporary Specification for gTLD Registration Data and associated requirements particularly as it relates to the EPDP?
- What is applicant's experience in and knowledge of the GNSO Policy Development Process and domain name registration process as it relates to ICANN?
- Is applicant able to commit the time required and necessary work needed to chair the EPDP?
- Conflict of Interest Statement – does applicant have any affiliation with or involvement in any organization

or entity with any financial or non-financial interest in the subject matter of this EPDP?

- Also expected to be included:
  - A link to an up-to-date Statement of Interest (SOI) - <https://community.icann.org/x/c4Lg>
  - A statement confirming your commitment and ability to act neutrally.

## ANNEX A

As outlined in the GNSO Working Group Guidelines (WGG), the purpose of a Chair is to call meetings, preside over working group deliberations, manage the process so that all participants have the opportunity to contribute, and report the results of the Working Group to the Chartering Organization. These tasks require a dedicated time commitment as each week calls have to be prepared, the agenda concretized, and relevant material reviewed. The Chair shall be neutral. While the Chair may be a member of any group which also has representation on the Working Group, the Chair shall not act in a manner which favors such group. The Chair shall not be a member of the Working Group for purposes of consensus calls.

In addition, it is expected – that interested candidates shall have considerable experience in chairing working groups, and direct experience with at least one GNSO Policy Development Process throughout its lifecycle. Familiarity with the functioning of a Working Group is important to understand the various leadership skills that are necessary to employ during a WG’s lifecycle. For example, a Chair has to ensure that debates are conducted in an open and transparent matter and that all interests are equally and adequately represented within the Group’s discussions. During the later stages of a WG when recommendations are drafted, a Chair will benefit from understanding the viewpoints of various participants to ensure that an acceptable and effective outcome – ideally in the form of consensus – can be achieved.

In short, a WG Chair is expected to:

- i. Attend all EPDP Team meetings to assure continuity and familiarity with the subject matter and the ongoing discussions;
- ii. Prepare meetings by reading all circulated materials;
- iii. Be familiar with the subject matter, including but not limited to GDPR and other relevant topics, and actively encourage participation during the calls;
- iv. Be active on the EPDP Team mailing list and invite EPDP Team members and liaisons to share their viewpoints;
- v. Drive forward the EPDP Team and assure that discussions remain on point;
- vi. Work actively towards achieving policy recommendations that ideally receive full consensus;
- vii. Ensure that particular outreach efforts are made when community reviews are done of the group's output;
- viii. Underscore the importance of achieving overall representational balance on any sub-teams that are formed;
- ix. Encourage and, where necessary, enforce the ICANN Standards of Behavior and Community Anti-Harassment Policy;
- x. Co-ordinate with ICANN staff and ensure that the WG is supported as effectively as possible; and
- xi. Conduct consistent, adequate and timely reporting to the GNSO Council on the progress of the EPDP.

Finally, as also pointed out in the GNSO Working Group Guidelines, ‘appointing a co-chair(s) or vice-chair(s) may facilitate the work of the Chair by ensuring continuity in case of absence, sharing of workload, and allowing the Chair to become engaged in a particular debate.’ As a result, similar tasks and skills are expected from vice-chair(s), although the overall workload may be reduced as a result of being able to share this with the Chair.

### **Role of the GNSO Council Liaison**

The GNSO Council shall appoint a liaison who is accountable to the GNSO. The liaison must be a member of the Council, and the Council recommends the liaison be a Council member able to serve during the life of this EPDP. Generally speaking, the liaison is expected to fulfill the liaison role in a neutral manner, monitor the discussions and calls of the EPDP Team, and assist and inform the Chair and the EPDP Team as may be required. In addition:

- The liaison shall serve as an interim EPDP Team Chair until a Team Chair is named. As per current practice, it would not be appropriate for the liaison to be considered for a permanent Chair or co-chair/vice-chair position;
- The liaison is expected to report to the GNSO Council on a regular basis (at a minimum, at or before the monthly meetings of the GNSO Council and as issues or significant milestones arise in the group’s work) on the progress of the Working Group. Such report is expected to be coordinated with the EPDP Team leadership;
- The liaison will assist the EPDP Team Chair as required with his/her knowledge of policy development processes and practices;
- The liaison will refer to the GNSO Council any questions or queries the EPDP Team might have in relation to its charter and mission;
- The liaison will assist or engage when the EPDP Team faces challenges or problems, and will notify the GNSO Council of efforts in this regard;
- The liaison will assist the EPDP Team Chair in suspected cases of abuse of ICANN’s Expected Standards of Behavior, ICANN’s Community Anti-Harassment Policy and/or restricting the participation of someone who seriously disrupts the Team;
- The liaison will facilitate in case there is disagreement between the EPDP Team Chair and EPDP Team member(s) in relation to designation of consensus given to certain recommendations;
- The liaison is expected to be a regular attendee/participant of EPDP Team meetings;
- The liaison is expected to fulfil his/her role in a neutral manner. It would not be appropriate for the liaison to intervene or participate in EPDP Team deliberations in his or her personal capacity; the liaison is expected to channel such comments through the representatives of his or her Stakeholder Group, and to only speak on calls and meetings in their official liaison capacity;
- The GNSO Council liaison is responsible for ensuring that the EPDP Team Chair(s) are informed about activities of the GNSO Council that have an impact on the EPDP Team. This includes not only actions taken with respect to substance related to the Team, but also any actions taken on matters upon which the Team depends or on which the Council depends on the Team;
- The GNSO Council liaison should participate in regular meetings with the EPDP Team Leadership and consult with EPDP Team Leadership prior to providing updates or reports to the GNSO Council; and,
- The GNSO Council liaison should be the person upon whom the Team relies to convey any



communications, questions or concerns to the GNSO Council.

Taking into account the role and responsibilities of the liaison identified above, the GNSO Council furthermore expects that the liaison:

- Will stay up-to-date on the deliberations in order to be in a position to provide the GNSO Council with adequate updates at appropriate times;
- Only participate in the EPDP in their official liaison capacity;
- Is alert to situations that may require liaison involvement and be prepared to act swiftly, as and when needed;
- Will notify the GNSO Council as soon as is practical if he/she is no longer able to take on these responsibilities so that another liaison can be identified; and
- Will notify the Council in a timely manner should there be any adjustment to the work plan and, in particular, any delay that may be likely to occur in adhering to the agreed EPDP milestones.

### **Recommended Working Methods and Resources Expected to be Available**

In order to optimize the time available for deliberations, the EPDP Team is expected to consider modifying existing working methods such as having more frequent and/or longer calls than typical PDP WGs do. Similarly, the EPDP Team should consider which tools provide the best flexibility to facilitate online collaboration but it must do so in accordance with the principles of accountability and transparency that are so important to the GNSO.

In addition to the standard services provided to GNSO PDP Working Groups such as policy staff support, mailing lists and regular conference calls, the EPDP team will need appropriate support to:

- Record and transcribe all EPDP Team calls, which are to be made publicly available;
- Conduct up to three face-to-face meetings in a cost-efficient manner. Based on the timeline it is the expectation that the EPDP Team may need F2F time to: 1) develop its draft Initial Report (estimated to take place in mid-September 2018) 2) potential additional days immediately before or after the ICANN AGM in October to finalize its Initial Report, and 3) depending on input received, a meeting to review and consider public comments and finalize the report for submission to the GNSO Council (estimated timeframe December-January);
- External legal counsel/advice to be used when deemed necessary and budget-wise such as for confirming the compliance of the proposed policy recommendations deliverables with the GDPR. External legal counsel/advice should only be sought if adequate support cannot be provided through existing resources as well as Data Protection Authority guidance that is already available. The decision to request external legal advice shall be approved by the EPDP Team leadership;
- External experts and advisors such as a data protection/GDPR expert, to complement expertise within the EPDP Team and other sources available. The decision to request advice from an external expert shall be approved by the EPDPT Team leadership in conjunction with a recommendation from a EPDP Team member that him or herself is an expert in that field; and
- Facilitate possible input as well as communication mechanisms to those that are not members of the EPDP team, such as communications support for the development of newsletters or the regular hosting of webinars. EPDP team members are still expected to liaise with their respective groups for information and inputs.

In its decision to request any of these additional services, the EPDP Team will act in a fiscally prudent manner and ensure cost efficient use of any additional resources that are provided and/or allocated budget. Any requests for additional services need to be made by the EPDP Team leadership with the support of the EPDP Team.

### **Working Group Roles, Functions, & Duties:**

The ICANN Staff assigned to the EPDP Team will fully support the work of the Team as requested by the Chair including meeting support, document drafting, editing and distribution and other substantive contributions when deemed appropriate.

Staff assignments to the Working Group:

- GNSO Secretariat
- ICANN policy staff members

In addition, regular participation of and consultation with other ICANN Org departments such as GDD and Legal is anticipated to ensure timely input on issues that may require ICANN Org input such as implementation related queries.

The standard WG roles, functions & duties shall be applicable as specified in Section 2.2 of the Working Group Guidelines.

### **Statements of Interest (SOI) Guidelines:**

Each member of the EPDP Team is required to submit an SOI in accordance with Section 5 of the GNSO Operating Procedures.

## **Section IV: Rules of Engagement**

### **Decision-Making Methodologies:**

*{Note: The following material was extracted from the Working Group Guidelines, Section 3.6. If a Chartering Organization wishes to deviate from the standard methodology for making decisions or empower the Team to decide its own decision-making methodology, this section should be amended as appropriate}.*

The Chair will be responsible for designating each position as having one of the following designations:

- **Full consensus** - when no one in the group speaks against the recommendation in its last readings. This is also sometimes referred to as **Unanimous Consensus**.
- **Consensus** - a position where only a small minority disagrees, but most agree. *[Note: For those that are unfamiliar with ICANN usage, you may associate the definition of 'Consensus' with other definitions and terms of art such as rough consensus or near consensus. It should be noted, however, that in the case of a GNSO PDP originated Working Group, all reports, especially Final Reports, must restrict themselves to the term 'Consensus' as this may have legal implications.]*
- **Strong support but significant opposition** - a position where, while most of the group supports a recommendation, there are a significant number of those who do not support it.
- **Divergence** (also referred to as **No Consensus**) - a position where there isn't strong support for any particular position, but many different points of view. Sometimes this is due to irreconcilable

differences of opinion and sometimes it is due to the fact that no one has a particularly strong or convincing viewpoint, but the members of the group agree that it is worth listing the issue in the report nonetheless.

- **Minority View** - refers to a proposal where a small number of people support the recommendation. This can happen in response to a **Consensus, Strong support but significant opposition, and No Consensus**; or, it can happen in cases where there is neither support nor opposition to a suggestion made by a small number of individuals.

In cases of **Consensus, Strong support but significant opposition, and No Consensus**, an effort should be made to document that variance in viewpoint and to present any **Minority View** recommendations that may have been made. Documentation of **Minority View** recommendations normally depends on text offered by the proponent(s). In all cases of **Divergence**, the WG Chair should encourage the submission of minority viewpoint(s).

The recommended method for discovering the consensus level designation on recommendations should work as follows:

- i. After the group has discussed an issue long enough for all issues to have been raised, understood and discussed, the Chair, or Co-Chairs, make an evaluation of the designation and publish it for the group to review.
- ii. After the group has discussed the Chair's estimation of designation, the Chair, or Co-Chairs, should reevaluate and publish an updated evaluation.
- iii. Steps (i) and (ii) should continue until the Chair/Co-Chairs make an evaluation that is accepted by the group.
- iv. In rare case, a Chair may decide that the use of polls is reasonable. Some of the reasons for this might be:
  - A decision needs to be made within a time frame that does not allow for the natural process of iteration and settling on a designation to occur.
  - It becomes obvious after several iterations that it is impossible to arrive at a designation. This will happen most often when trying to discriminate between **Consensus** and **Strong support but Significant Opposition** or between **Strong support but Significant Opposition** and **Divergence**.

Care should be taken in using polls that they do not become votes. A liability with the use of polls is that, in situations where there is **Divergence** or **Strong Opposition**, there are often disagreements about the meanings of the poll questions or of the poll results.

Based upon the WG's needs, the Chair may direct that WG participants do not have to have their name explicitly associated with any Full Consensus or Consensus view/position. However, in all other cases and in those cases where a group member represents the minority viewpoint, their name must be explicitly linked, especially in those cases where polls were taken.

Consensus calls should always involve the entire Working Group and, for this reason, should take place on the designated mailing list to ensure that all Working Group members have the opportunity to fully participate in the consensus process. It is the role of the Chair to designate which level of consensus is reached and announce this designation to the Working Group. Member(s) of the Working Group should be able to challenge the designation of the Chair as part of the Working Group discussion. However, if disagreement persists, members of the WG may use the process set forth below to challenge the designation.

If several participants (see Note 1 below) in a WG disagree with the designation given to a position by the Chair or any other consensus call, they may follow these steps sequentially:

1. Send email to the Chair, copying the WG explaining why the decision is believed to be in error.
2. If the Chair still disagrees with the complainants, the Chair will forward the appeal to the CO liaison(s). The Chair must explain his or her reasoning in the response to the complainants and in the submission to the liaison. If the liaison(s) supports the Chair's position, the liaison(s) will provide their response to the complainants. The liaison(s) must explain their reasoning in the response. If the CO liaison disagrees with the Chair, the liaison will forward the appeal to the CO. Should the complainants disagree with the liaison support of the Chair's determination, the complainants may appeal to the Chair of the CO or their designated representative. If the CO agrees with the complainants' position, the CO should recommend remedial action to the Chair.
3. In the event of any appeal, the CO will attach a statement of the appeal to the WG and/or Board report. This statement should include all of the documentation from all steps in the appeals process and should include a statement from the CO (see Note 2 below).

Note 1: Any Working Group member may raise an issue for reconsideration; however, a formal appeal will require that a single member demonstrates a sufficient amount of support before a formal appeal process can be invoked. In those cases where a single Working Group member is seeking reconsideration, the member will advise the Chair and/or Liaison of their issue and the Chair and/or Liaison will work with the dissenting member to investigate the issue and to determine if there is sufficient support for the reconsideration to initial a formal appeal process.

Note 2: It should be noted that ICANN also has other conflict resolution mechanisms available that could be considered in case any of the parties are dissatisfied with the outcome of this process.

### **General Communication/Status Reporting:**

Routine and frequent communication regarding current status from the EPDP Team leadership to the Council and to the community will be provided at no less than a [monthly] frequency. Communication/status reporting may be provided in a variety of forms, including but not limited to, newsletters, publicly available webinars hosted by ICANN staff and EPDP Team leadership, participation by the public as observers in the EPDP, and/or public access to the EPDP Team's mailing list and/or the GNSO Council's mailing list as observers. The EPDP Team is expected to communicate in a timely manner should there be any adjustment to the work plan and especially any delay that may have occurred in meeting the EPDP milestones.

### **Problem/Issue Escalation & Resolution Processes:**

*{Note: the following material was extracted from Sections 3.4, 3.5, and 3.7 of the Working Group Guidelines and may be modified by the Chartering Organization at its discretion}*

The WG will adhere to [ICANN's Expected Standards of Behavior](#) as adopted in June 2016.

If a EPDP Team member feels that these standards are being abused, the affected party should appeal first to the Chair and/or GNSO Council Liaison and, if unsatisfactorily resolved, to the Chair of the Chartering Organization or their designated representative. It is important to emphasize that expressed disagreement is not, by itself, grounds for abusive behavior. It should also be taken into account that as a result of cultural differences and language barriers, statements may appear disrespectful or inappropriate to some but are not necessarily intended as such. However, it is expected that EPDP Team members make every effort to respect

the principles outlined in ICANN’s Expected Standards of Behavior and Community Anti-Harassment Policy.

The Chair, in consultation with the GNSO Council liaison(s), is empowered to restrict the participation of someone who seriously disrupts the EPDP Team or does not adhere to the statement of participation. Any such restriction will be reviewed by the Chartering Organization. Generally, the participant should first be warned privately, and then warned publicly before such a restriction is put into place. In extreme circumstances, this requirement may be bypassed.

Any EPDP Team member that believes that his or her contributions are being systematically ignored or discounted or wants to appeal a decision of the WG or CO should first discuss the circumstances with the EPDP Team Chair. In the event that the matter cannot be resolved satisfactorily, the EPDP Team member should request an opportunity to discuss the situation with the Chair of the Chartering Organization or their designated representative.

In addition, if any member of the EPDP Team is of the opinion that someone is not performing their role according to the criteria outlined in this Charter, the same appeals process may be invoked.

**Conflict Resolution**

Recognizing that the subject of this EPDP has been a matter of great debate and little resolution throughout the life of ICANN, the GNSO Council has determined that it would be useful to supplement the regular Expected Standards of Behavior by providing the working group with the services of an independent dispute resolution practitioner, who can recognize blockages in consensus building that might be caused by stakeholders becoming intransigent with respect to their positions on issues. The purpose of this professional intervention is to assist the working group in reaching consensus positions, not in handling behavior issues.

**Closure & Working Group Self-Assessment:**

The EPDP Team will close upon the delivery of the Final Report, unless assigned additional tasks or follow-up by the GNSO Council.

**Section V: Charter Document History**

Version	Date	Description
1.0		

<b>Staff Contact:</b>	<Enter staff member name>	<b>Email:</b>	<a href="mailto:Policy-Staff@icann.org">Policy-Staff@icann.org</a>