

EPDP Team Meeting

7 August 2018

Meeting 2

Agenda

1. Welcome and Updates from EPDP Chair
2. Roll Call & SOI Updates
3. Overview of EPDP Input Survey Part 1 Results
 - Part 1 of the Survey can be found at <https://www.surveymonkey.com/r/CC6F9F8>
4. Substantive discussion of Temporary Specification
5. Wrap and confirm next meeting to be scheduled for Thursday 8 August at 13.00 UTC

High-level Overview of EPDP Input Survey Part 1 Results

Six Realizations from the First Exercise

1. There is not consensus for supporting most of the sections of the Temporary Specification
2. The rationale included in the survey did point a way forward, i.e., consider the "legitimate purposes" sections first (4.4.1-4.4.13) and that might resolve contention about the "rationale" sections (4.1-4.3 & 4.5). The rationale also provided a basis for discussion in the Initial Report section
3. Given the lack of consensus, we should close the Triage stage as quickly as possible.
4. The rationale will form the basis of the Triage report
5. We need to create some summary of the issues raised in the detail in the individual comments so the GNSO Council can more quickly grab the gist of the issues
6. Substantial work and thought went into this first effort, necessitating an amendment to the proposed schedule. The next section will be due at 19:00UTC, Friday, 10 Aug. We will hold to the last delivery date of August 19.

Suggested Path for Triage

1) The Triage is intended to be an abbreviated process...

...that indicates the degree of consensus on the separate sections of the Temporary Specification

2) Initial indications are that the level of consensus is low...

...but we don't want that fact to slow the delivery of the Triage and delay substantive work

3) We intend to deliver:

- A summary of response (red/green) indicating the level of support for each group
- Each of the comments delivered in a matrix (spreadsheet)
- An issue summarization, distilling the issues raised in each section of the Temporary Specification

4) We will spend the next few meetings sharing comments / points of view on various sections...

...and agree, without too much ado on the final version of an issue summarization provided by the team leadership.

Summary of Responses

	IPC	GAC	NCSG	RrSG	ISPCP	BC	ALAC	RySG	SSAC
Sections 1.1., 1.2., 1.3.	Yes	Yes	No	Yes	No	Yes	Yes	No	Yes
Section 2.	Yes	Yes	Yes	No	Yes	Yes	Yes	No	Yes
Section 3.	Yes	Yes	Yes	NSO	No	Yes	Yes	No	NSO
Sections 4., 4.1., 4.2.	Yes	Yes	No	No	No	Yes	Yes	No	Yes
Section 4.3.	Yes	Yes	No	No	No	Yes	Yes	No	Yes
Section 4.4., 4.4.1.	No	No	Yes	No	Yes	Yes	Yes	No	Yes
Section 4.4.2.	Yes	Yes	No	No	No	Yes	Yes	No	Yes
Section 4.4.3.	Yes	Yes	NSO	No	No	Yes	Yes	No	Yes
Section 4.4.4.	Yes	Yes	Yes	No	No	Yes	Yes	No	Yes
Section 4.4.5.	Yes	Yes	No	No	No	Yes	Yes	No	Yes
Section 4.4.6.	Yes	Yes	No	No	No	Yes	Yes	No	Yes
Section 4.4.7.	Yes	Yes	Yes	No	No	Yes	Yes	No	Yes
Section 4.4.8.	Yes	No	NSO	No	No	Yes	Yes	No	Yes
Section 4.4.9.	Yes	No	Yes	NSO	No	Yes	Yes	No	Yes
Section 4.4.10.	Yes	Yes	Yes	No	No	Yes	Yes	No	Yes
Section 4.4.11.	Yes	Yes	Yes	No	Yes	Yes	Yes	No	Yes
Section 4.4.12.	Yes	Yes	Yes	NSO	Yes	Yes	Yes	No	Yes
Section 4.4.13.	No	Yes	Yes	No	No	Yes	Yes	No	Yes
Section 4.5., 4.5.1. - 4.5.5.	Yes	Yes	No	No	No	Yes	No	No	Yes
Appendix A 1.-1.2.2.	Yes	No	NSO	No	No	Yes	Yes	No	Yes
Appendix A 2., 2.1. - 2.3.	No	No	Yes	No	No	No	No	No	No
Appendix A 2.4 - 2.6.	No	No	Yes	No	No	No	Yes	No	No
Appendix A 3.	No	No	NSO	No	Yes	No	Yes	Yes	No
Appendix A 4., 4.1., 4.2.	Yes	No	Yes	Yes	No	Yes	Yes	Yes	No
Appendix A 5.	Yes	Yes	NSO	Yes	Yes	Yes	NSO	No	Yes

Substantive discussion of Temporary Specification

Sections 1.1 – 1.3, Scope

Issue Summary:

The clause, “unless ICANN determines in its reasonable discretion that this Temporary Specification SHALL NOT control,” is problematic.

The team should understand why it was included (e.g., yet to be discovered conflicts, future changes in GDPR implementation). Should the group plan for its deletion as it re-writes the specification.

Section 2, Definitions

Issue Summary:

"Interim model" might not belong in the next version of the specification. "Registration Data" definition might be refined in our later discussion.

Section 3, Policy Effective Date

Issue Summary: If we are writing the replacement for the Temporary Specification, this date will not appear in the next version. (What is the precise expiration date?)

Sections 4.1 – 4.2, Lawfulness and Purposes of Processing gTLD Registration Data

Issue Summary:

There is a difference of opinion as to whether ICANN's Bylaws and its role described in the Temporary Specification extend beyond ICANN's remit.

These introductory sections should be re-examined after the analysis of the sections 4.4 et.seq. is completed.

Section 4.3, Lawfulness and Purposes ...

Issue Summary:

There is a divergent view regarding the effect of the Bylaws on ICANN's power to require the collection, use and disclosure of personal data. Some point out, as in the case with the previous section, that it is more important to determine in which purposes the uses & disclosure of data are legitimate and not over-ridden by fundamental rights as laid out in the GDPR. Then this section can be re-written necessary (or eliminated).

Section 4.4, 4.4.1, Lawfulness & Purposes...

Issue Summary:

- There is a suggestion that LEA access to personal data needn't pass the balancing that data can be disclosed when legitimate and not over-ridden by fundamental rights. The preamble should refer to Art.6 of the GDPR.
- There is also a concern that "and only for the following legitimate purposes," limits the longevity of the specification. (Is this cured by 4.4.2?)
- The specification should also take into account that other privacy regimes might be accommodated in this specification.

Section 4.4.2, Lawfulness and Purposes ...

Issue Summary:

Those concerned with this provision think it might not adequately test data requests against the rights of individuals and the need to narrowly tailor personal data disclosures to the "necessity." (How does the test "not outweighed by the fundamental rights" differ from the GDPR test?)

(Does this "catch-all" provision cure the concern in the preamble that the uses if data are limited?)

Section 4.4.3, Lawfulness and Purposes...

Issue Summary:

The registrars, the party contacting the registrant, state that they use data only to contact registrants, not "identify" them.

Section 4.4.4, Lawfulness and Purposes...

Issue Summary:

Registrars do not use registration data for this purpose. Should the paragraph be struck from the Temporary Specification?

Section 4.4.5, Lawfulness and Purposes ...

Issue Summary:

- One issue raised is whether "content" should be a part of this section.
- Another issue is the actual flow of data requests, the registrars role and the actual use of registration data in these types of requests. The registrar representatives could present this information.

Section 4.4.6, Lawfulness and Purposes ...

Issue Summary:

Again in this case, registrars should explain how they communicate with registered name holders to determine if registration data are used.

Section 4.4.7, Lawfulness and Purposes ...

Issue Summary:

Opinions not in favor of this section question the utility of this voluntary data submission and whether voluntary data submissions should be included in the temporary specification.

Section 4.4.8, Lawfulness and Purposes ...

Issue Summary:

Explanation opposed to this section are not sufficiently detailed to adequately describe the issue. For example, what is the distinction among DNS Abuse, cybercrime and intellectual property theft?

Section 4.4.9, Lawfulness and Purposes ...

Issue Summary:

- There is a suggestion that LEA access to personal data needn't pass the balancing that data can be disclosed when legitimate and not over-ridden by fundamental rights. The preamble should refer to Art.6 of the GDPR.
- Must LEAs demonstrate the right to access data?

Section 4.4.10, Lawfulness and Purposes ...

Issue Summary:

Given the distinction between zone file data and registration data, whether zone file contains personal data, and the fact that zone file data is currently available - can this section remain?

Section 4.4.11, Lawfulness and Purposes ...

Issue Summary:

Is it accurate to say there is general approval of this data use so long as ICANN does not have access to the registration data (which is thought to be the case)?

Section 4.4.12, Lawfulness and Purposes ...

Issue Summary:

Except for the standard registry response, there appears to be consensus support for this section. Recommendations for enhancement can occur in the next step.

Section 4.4.13, Lawfulness and Purposes ...

Issue Summary:

Where there is disagreement with this section, the disagreement focuses on those specific data needs, without which the compliance task would be impossible to accomplish.

Section 4.5, Lawfulness and Purposes ...

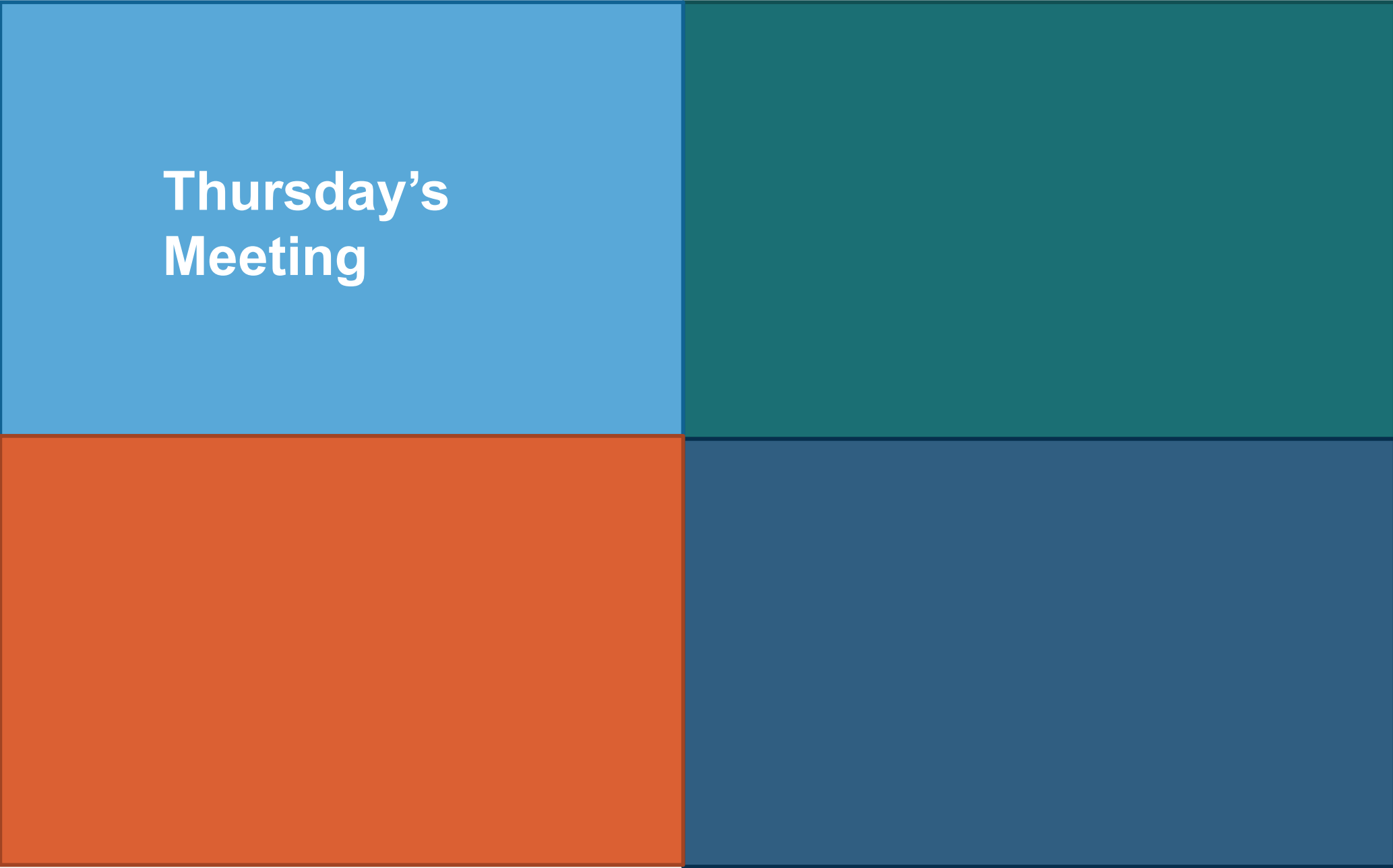
Issue Summary:

Those not supporting this provision found the rationale in sections 4.5.1 et seq. unconvincing.

The alternative approach might be, as discussed earlier, to discuss the data collection and disclosure purposes recommended in 4.1.1 et seq. and develop this section, if needed, after that.

Appendix A

**Thursday's
Meeting**



Wrap Up

Mid-course corrections to today's meeting

Next meeting to be scheduled for Thursday 8 August at 13.00 UTC

Note: Part 2 Temp Spec Survey submissions due by **FRIDAY, 10 Aug. @ 19:00 UTC**