

EPDP Team Meeting

20 September 2018

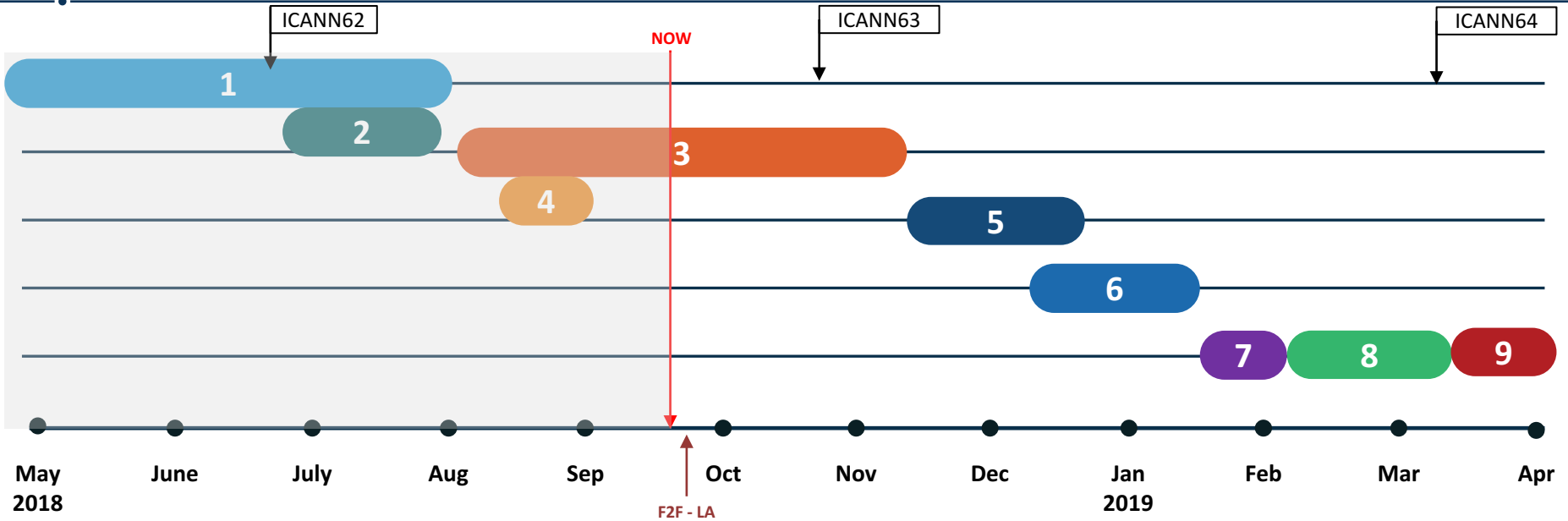
Meeting #15

Agenda

1. Roll Call & SOI Updates
2. Welcome and Updates from EPDP Team Chair (5 min)
3. Review and discuss draft agenda for EPDP meeting in Los Angeles (30 min)
 - obtain input on the agenda and objectives of the meeting
 - discuss a routinized way of discussing topics
4. Continue with purposes matrix §§4.4.11 – 4.4.13. (30 min)
For newly added purposes explain why it is legitimate and lawful
5. Introduction to Appendix A (30 minutes)
Relevant charter questions:
 - 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?
6. Confirm action items and questions for ICANN Org, if any (5 minutes)
7. Wrap and confirm next meeting to be scheduled for Monday, 23 September at 15.30 UTC at ICANN Los Angeles.

EPDP Timeline

20 September 2018
Meeting #15



- 1

1 Prep work, incl. EPDP Initiation Request & Charter adoption
- 2

2 Formation of EPDP Team
- 3

3 EPDP Team Deliberation & Publication of Initial Report⁽¹⁾
- 4

4 Input from SO/ACs & SG/Cs
- 5

5 Public Comment on Initial Report
- 6

6 Review of Public Comment & Submission of Final Report
- 7

7 Council consideration of Final Report
- 8

8 Public Comment prior to Board consideration⁽²⁾
- 9

9 Board consideration

07
Meetings to ICANN 63
246
Days to Temp Spec Expiration

3 (F2F – LA)

(1) Access Model deliberations will begin after gating questions have been completed & will be added to the timeline then.
 (2) Exploring option for alternative method for community input while satisfying Bylaws requirement, await response.

F2F Agenda

Agenda Item #3

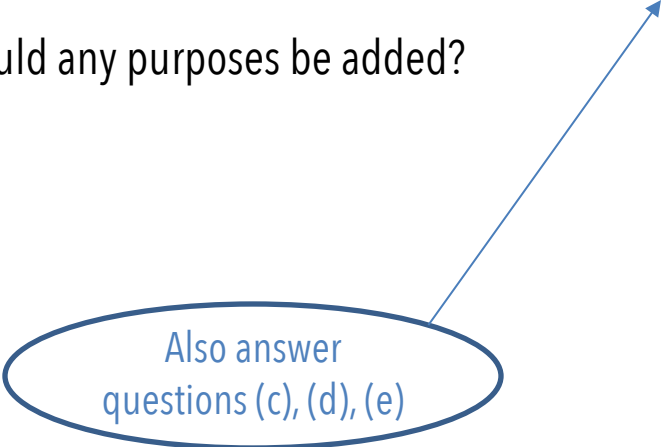
Primary Meeting Topics:

- Purposes for Processing Registration Data
- Data Collection

Charter questions associated with Purposes for Processing Registration Data:

- 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?

Also answer questions (c), (d), (e)



Charter Questions associated with data collection:

- 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?

Draft Agenda for EPDP F2F – Day 1

Timeline	Topic
8:30	Arrive at ICANN
9:00	Introductions and Agenda Review
9:30	Road Map for GDPR Policy <i>Goal: Confirm products and requirements</i> What does victory look like? <ul style="list-style-type: none">•In this meeting•For the Initial Report delivery at ICANN Barcelona Required Components <ul style="list-style-type: none">•Legitimate Purposes for Processing Personal Data•Data Elements Analysis•Data Elements Redaction•Data Retention•Other? Minimum Required for Initial Report Summary Report Outline

Draft Agenda for EPDP F2F – Day 1

Timeline	Topic
10:30	Quick Break
10:45	GDPR-Compliant Purposes for Processing Data (Section 4.4) <ul style="list-style-type: none">•Step 1: Clarify <i>who</i> has a legitimate purpose and <i>what</i> exactly it is•Step 2: Compliance check with GDPR (compare against 6 GDPR purposes - what else?)•Step 3: Note any caveats or guidance on issues of Disclosure (amount of data, how, when etc.)
12:00	Lunch (Provided)
1:00	Purposes & Compliance (continued)
3:00	Break
3:15	Specific Data Processing <ul style="list-style-type: none">•Data Elements•Redaction of Personal Data•Logging of Access to Non-Public WHOIS Data•[Appendix A, Sections 2 and 4]
5:45	Summarize Day-1 Progress and Plans for Day 2

§4.4 Purpose for Processing Registration Data

Agenda item #4

Agenda Item #5, refer to these documents:

- a) Review input received on Registrar purposes, see https://docs.google.com/document/d/1linDj9isH6uU-KYIVPPu2GyT0-Q3urTXXIW1Hhr_-y8/edit
- b) Review input received on overview of purposes, see https://docs.google.com/spreadsheets/d/1RivZFrPQpJ_bgDlOI6yfhYhYaSs2oYgS1n4TObifAoj8/edit#gid=1439148289

Charter questions:

(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?

(2) Data retention:

- g1) Should adjustments be made to the data retention requirement (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?

Action:

Develop matrix of data processing purposes and identify which parties have that purpose:

- Registrars
 - Registries
 - ICANN
 - Third-party interests
- } Continue with §§4.4.11 – 4.4.13

EDPB advice: “ICANN should take care not to conflate its own purposes with the interests of third parties.”

Introduction to Appendix A

Agenda Item #5

Objective: Appendix A - Registration Data Directory Services

I. Redaction: relevant charter questions:

- 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?

II. Applicability of Data Processing Requirements: relevant charter questions:

- 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).

III. Reasonable Access: relevant Charter questions

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

A. If so:

1. Under §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: 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?

Appendix A: §§2.1–2.3, §3 Issues for Discussion

- §2.1 (when coupled with §3):
 1. Describes the sets of conditions when registrars are to redact personal data from Whois and its progeny
 2. During the Triage session it was suggested that these sets of circumstances be narrowed
 - a. Can this suggested amendment be reiterated for the current discussion?
 - b. Registrars: can this accommodation be made?

- § 2.3: During Triage it was suggested that:
 - Additional data be specified in the Temporary Specification as personal data and be redacted (e.g., organization name, city, postal code)
 - Data currently indicated as personal be reclassified and taken off the redacted list (e.g., email address)

Can these recommendations be reiterated with rationale?
What is the path for resolution?

- Consent: can we provide a path or wording for resolving when consent to access to personal data can be addressed?

Appendix A: §4 Issues for Discussion

§4.1 Questions:

- Should this section be modified as not all disclosure of data will take place on the basis of Art. 6(1)(f) of the GDPR?

Consider the earlier proposal by Alex Deacon. Is this being redone?

§4.2 Questions:

- What is meant by "reasonable" access?

ICANN response: "Reasonable access" is not defined in the Temporary Specification. Generally, compliance with the requirement for registrars and registries to provide reasonable access to non-public registration data is evaluated on a case-by-case basis, based on evidence provided by the requestor, including its request for access to non-public registration data, evidence of the requestor's legitimate purpose for accessing the non-public registration data, the timing and content of the contracted party's response to the request (if any), and any other information or evidence relevant to assessing the request and response.

It might be:

- Access reasonably provided (is that the ICANN response?)
- Access to a reasonable amount of data – sufficient to address the legitimate need

Wrap Up

Agenda item #6-7

Wrap Up

Review actions items and questions for ICANN Org, if any

Next meeting to be scheduled for Monday 24 September at 15.30 UTC
(08:30am, local time)