

Consideration of next steps in relation to EPDP Phase 2 Priority 2 items

Background:

In order to organize its work, the EPDP Team agreed to divide its work for phase 2 into priority 1 and priority 2 topics. Priority 1 consists of the System for Standardized Access/Disclosure to nonpublic registration data (SSAD) and all directly-related questions. Priority 2 includes a number of topics that were deferred from phase 1 to phase 2 as well as some items that were part of the annex to the Temporary Specification which was also included as part of the EPDP Team's charter. None of these priority 2 items were considered to be on the critical path for delivery of a Final Report on SSAD. However, this does not imply that these topics are not considered to be important. The priority 2 topics are:

- a) Display of information of affiliated vs. accredited privacy / proxy providers
- b) Legal vs. natural persons
- c) City field redaction
- d) Data retention
- e) Potential Purpose for ICANN's Office of the Chief Technology Officer
- f) Feasibility of unique contacts to have a uniform anonymized email address
- g) Accuracy and WHOIS Accuracy Reporting System
- h) Purpose 2

The EPDP Team agreed that priority should be given to completing the deliberations for priority 1 items. It agreed, however, that where feasible, the Team would also endeavor to make progress on priority 2 items in parallel.

Current status:

It is the expectation that for a number of these items, namely a, c, e, h and possibly d, it will be possible to include them in the SSAD Final Report targeted for the end of June 2020, but for the others, it is unlikely that this will be feasible, either because the EPDP Team has not had sufficient time to consider new information or new information is expected to be available shortly, but not in time for the EPDP Team to consider it before it finalizes its SSAD Final Report.

Objective of this document:

By means of this document, the Staff Support Team to the EPDP Team and the GNSO Council liaison would like to provide some further insight into the topics that are expected to remain and possible next steps for the Council's consideration.

Overall consideration

As these topics are part of the EPDP Team’s charter, the GNSO Council is expected to provide guidance to the EPDP Team on if/how it is expected to address these remaining topics, noting that the current Chair of the EPDP Team, Janis Karklins, will be stepping down at the end of June 2020. As such, the Council seems to have the following options:

| Option 1 | Option 2 | Option 3 |
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| <p>Reset of the EPDP :</p> <ul style="list-style-type: none"> ● Finding a new chair; ● Refresh of EPDP Team membership assuming not all members may want to continue after finalization of the SSAD Final Report; ● Additional scoping for those topics where issues may not have been clearly identified or the Council’s expectations not clearly formulated; ● Identification of additional guidance or research to help inform the deliberations on a particular topic. | <p>The GNSO Council to consider whether it would be appropriate to terminate the EPDP and initiate separate dedicated efforts to address these topics e.g accuracy.</p> | <p>Combination of the above : Some topics that would continue in the EPDP, especially those that are expected to result in Consensus Policy recommendations, after a reset and some topics that might be addressed separately in a different manner (e.g. drafting team, scoping team, study group).</p> |

| Priority 2 Topic | Origin | Why has the EPDP Team not agreed yet on how to address this issue? | How can this topic be addressed? |
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| <p>b. Legal vs. Natural Persons</p> | <p>The EPDP Team charter includes the following question: “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?”</p> | <p>The results of the study as outlined under 2) have not been published yet. It should also be noted that legal guidance was provided on this topic which the EPDP Team has not considered in detail.</p> <p>It should be noted though that a number of groups have indicated that</p> | <p>At a minimum, the study results and legal advice should be given due consideration, recognizing that views on this topic are far apart and consensus may be difficult to achieve.</p> |

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| | <p>The EPDP Team addressed this question in phase 1 Final Report in the following way:</p> <p>EPDP Team Recommendation #17.</p> <p>1) The EPDP Team recommends that Registrars and Registry Operators are permitted to differentiate between registrations of legal and natural persons, but are not obligated to do so.</p> <p>2) The EPDP Team recommends that as soon as possible ICANN Org undertakes a study, for which the terms of reference are developed in consultation with the community, that considers:</p> <ul style="list-style-type: none">● The feasibility and costs including both implementation and potential liability costs of differentiating between legal and natural persons;● Examples of industries or other organizations that have successfully differentiated between legal and natural persons;● Privacy risks to registered name holders of differentiating between legal and natural persons; and● Other potential risks (if any) to registrars and registries of not differentiating. | <p>it is unlikely that their position topic will change, regardless of the outcome of the study or the legal guidance.</p> | |
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| | <p>3) The EPDP Team will determine and resolve the Legal vs. Natural issue in Phase 2.</p> <p>The GNSO Council adopted these recommendations when it adopted the EPDP Phase 1 Final Report.</p> | | |
| f) Feasibility of unique contacts to have a uniform anonymized email address | <p>This topic was included in the Annex (Important Issues for Community Consideration) to the Temporary Specification which is part of the EPDP Team Charter:</p> <ul style="list-style-type: none"> Addressing the feasibility of requiring unique contacts to have a uniform anonymized email address across domain name registrations at a given Registrar, while ensuring security/stability and meeting the requirements of Section 2.5.1 of Appendix A. | <p>The EPDP Team received legal guidance on this topic and initially concluded that: “The EPDP Team received legal guidance noting that the publication of uniform masked email addresses results in the publication of personal data; therefore, wide publication of masked email addresses is not currently feasible under the GDPR as disclosure would, in certain instances, require meaningful human review, i.e., balancing test under GDPR Article 6(1)(f)”. In response to the public comment forum, however, several groups indicated that further consideration should be given to how other registration authorities have implemented similar safeguards and whether advice/guidance could be sought on this topic from the EDPB.</p> | <p>The EPDP Team was only able to consider the legal guidance and did not have time to consider how other registration authorities have implemented similar safeguards or whether further guidance could be sought on this topic from the EDPB. This additional information and/or guidance could potentially result in a different conclusion.</p> |
| g) Accuracy and WHOIS Accuracy Reporting System | <p>The phase 1 Final Report included the following footnote: “The topic of accuracy as related to GDPR compliance is expected to be considered further as well as the WHOIS Accuracy Reporting System”.</p> | <p>Legal guidance was received in relation to this topic but disagreement has persisted over if/how this topic should be considered and what the scope of consideration should be. Some are of the view that this is a key issue as there is concern that the value of SSAD</p> | <p>As the only reference to this issue was in the form of a footnote, there is a lack of understanding and agreement on what the specific issue(s) is that requires consideration and what the best approach is for doing so. As such, scoping of the issue(s) is key which</p> |

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| | | <p>would significantly diminish after having gone through all the requirements inaccurate data would be returned, while others have pointed to the expectation that with personal data no longer being publicly available, registrants will no longer have an incentive to not provide accurate data. As a result of these disagreements and a request for clarification, the GNSO Council already directed the EPDP Team to not further consider this issue at this point in time. However, several groups indicated in the public comment forum that they do not agree with the Council's decision and want to see this issue addressed urgently.</p> | <p>would also facilitate identifying what the most appropriate path for addressing those issues is. Note, none of the existing accuracy requirements are the result of Consensus Policy development.</p> |
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Recommendation for consideration:

Based on the current status of work and considering the most efficient way to address the priority topics that are expected to remain, as the GNSO Council liaison to the EPDP, I would suggest the Council consider moving forward with option 3 in the following manner:

- Reset the PDP to allow for further consideration and completion of the charter to address the following two topics: 1) legal vs natural persons and 2) Feasibility of unique contacts to have a uniform anonymized email address. A specific timeline (e.g. 3 months) after reconvening should be set for the EPDP Team to report back to determine the likelihood of consensus emerging on these topics. Note, if no consensus can be found for Consensus Policy recommendations, the EPDP Team could also consider guidance or best practices to Contracted Parties for these topics based on its consideration of these topics. Based on the feedback from the EPDP Team, the Council

would decide whether further time would be granted to the EPDP Team to complete its work or whether termination of the EPDP would be in order.

- Convene a scoping team to further consider the topic of accuracy - the scoping team would be expected to identify what specific issues, if any, need to be addressed in relation to accuracy and identify the best path for addressing these issues. The findings of the scoping team would be presented to the GNSO Council for its consideration.