

GNSO Council Recommendations Report to the ICANN Board - Regarding Adoption of the Final Recommendations from the Expedited Policy Development Process on the Temporary Specification for gTLD Registration Data Phase 2A

6 December 2021

Status of This Document

This is the GNSO Council Recommendations Report to the ICANN Board following the adoption by the GNSO Council of the Final Recommendations of the Expedited Policy Development Process on the Temporary Specification for gTLD Registration Data Phase 2A.

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1. Executive Summary

On 27 October 2021, the GNSO Council [voted](#) to approve with the required GNSO Supermajority support all the recommendations contained in the [Final Report](#) from the Team that had been chartered to conduct phase 2A of an Expedited Policy Development Process (EPDP) on the Temporary Specification for gTLD Registration Data. This Recommendations Report is being sent to the ICANN Board for its review of the EPDP Phase 2A recommendations, which the GNSO Council recommends be adopted by the ICANN Board. Please see Annex B for an overview of all the approved recommendations.

The EPDP Team originally divided its work into two phases; Phase 1 completed with the adoption of the EPDP Phase 1 Final Report on 4 March 2019, at which point the GNSO Council indicated its non-objection, as required per the EPDP Team Charter, for the EPDP Team to commence work on a System for Standardized Access/Disclosure to Non-Public Registration Data (“SSAD”) as well as other topics identified in Phase 2 of the Charter and/or carried over from Phase 1 (priority 2 items).

The Phase 2 Final Report noted that “As a result of external dependencies and time constraints, this Final Report does not address all priority 2 items”. It furthermore noted that the EPDP Team would “consult with the GNSO Council on how to address the remaining priority 2 items”.

On 21 October 2020, the GNSO Council approved [instructions](#) for the EPDP Phase 2A to address the remaining priority 2 items, namely 1) differentiation between legal and natural person registration data, and 2) feasibility of unique contacts to have a uniform anonymized email address.

The EPDP Team commenced its deliberations on Phase 2A on 17 December 2020 and published its Initial Report for public comment on 3 June 2021 (see <https://www.icann.org/public-comments/epdp-phase-2a-initial-report-2021-06-03-en>).

Following its review of all the public comments received, the EPDP Team finalized its recommendations and completed its [Final Report](#), which was submitted to the GNSO Council on 3 September 2021 (note, a number of minority statements were submitted after this date and have been integrated into the Final Report).

The policy recommendations, if approved by the Board, will not impose obligations on contracted parties. Under the ICANN Bylaws, the Council’s Supermajority support for the EPDP recommendations obligates the Board to adopt the recommendations unless, by a vote of more than two-thirds, the Board determines that the policy is not in the best interests of the ICANN community or ICANN.

2. GNSO Vote

If a successful GNSO Vote was not reached, a clear statement of all positions held by Council members. Each statement should clearly indicate (i) the reasons underlying each position and (ii) the Constituency(ies) or Stakeholder Group(s) that held that position.

While the GNSO Council approved the EPDP Team's Final Report with the required Supermajority support, the [vote](#) was not unanimous. The resolution received 100% of the Contracted Parties House in favor and 61.54% of the Non-Contracted Parties House in favor.

Please find a link to the meeting minutes

(<https://gns0.icann.org/sites/default/files/policy/2021/minutes/minutes-gns0-council-part1-27oct21-en.pdf>), wherein the additional statements made by Council members on behalf of their respective groups are included.

3. Analysis of affected parties

An analysis of how the issue(s) would affect each Constituency or Stakeholder Group, including any financial impact on the Constituency or Stakeholder Group.

Policy recommendations regarding the access to and disclosure of non-public gTLD registration data will affect a number of GNSO Constituencies and Stakeholder Groups, as well as ICANN Advisory Committees. Accordingly, the EPDP Team included members from all of the GNSO's Stakeholder Groups and Constituencies within the composition of the EPDP Team. In recognition of the effect on many stakeholders within the ICANN Community, the GNSO Council chose to invite all Advisory Committees and Supporting Organizations to participate in the EPDP Team. Following receipt of an invitation, the At-Large Advisory Committee (ALAC), the Governmental Advisory Committee (GAC), and the Security and Stability Advisory Committee (SSAC) chose to participate. The Final Report also includes, where provided, statements from the participating groups. The Final Report and its recommendations achieved consensus support, per the process that is outlined in section 3.6 of the [GNSO Working Group Guidelines](#)' however, the Chair noted the following within the Chair's statement:

While this Final Report and its recommendations have the consensus support of the EPDP 2A Team, it's important to note that some groups felt that the work did not go as far as needed, or did not include sufficient detail, while other groups felt that certain recommendations were not appropriate or necessary. (...) This Final Report constitutes a compromise that is the maximum that could be achieved by the group at this time under our currently allocated time and scope, and it should not be read as delivering results that were fully satisfactory to everyone.

The GNSO's Stakeholder Groups and associated Constituencies were given the opportunity to provide additional statements, which were annexed to the Final Report. Below, please find a high-level summary of the concerns noted within the statements.

The At-Large Advisory Committee (ALAC) noted its concerns about not requiring differentiation between legal and natural person data, not mandating the usage of a common data element by all Contracted Parties and the lack of means to contact registrants, highlighting the 'impact on the security and safety of everyday Internet users'.

Similarly, the Business Constituency (BC) notes that 'optional differentiation of legal vs. natural persons is inadequate' and 'ICANN policy must require such differentiation to ensure the security and stability of the global DNS'. The BC is also of the view that 'a registrant-based email address should be required to facilitate the investigation of DNS abuse'.

The Intellectual Property Constituency (IPC) is also of the view that the outcome should have been binding requirements instead of guidance.

The Governmental Advisory Committee (GAC) expresses a similar concern in its statement and therefore considers that the recommendations ‘fall short of the GAC’s expectations for policies that would require the publication of domain name registration data that is not protected under the EU’s General Data Protection Regulation (GDPR) and create an appropriate framework to encourage the publication of pseudonymized email contacts with appropriate safeguards’.

The Non-Commercial Stakeholder Group (NCSG) notes in its statement that ‘the distinction between legal and natural is not a useful distinction to make, when deciding about the need to protect data in the RDS’, pointing out that natural person data may appear as part of a legal person registration data and as such there is a risk of revealing personal data.

The Registrar Stakeholder Group (RrSG) points out that ‘any potential benefits of mandatory policy obligations in these areas, which would negate the crucial ability for registrars to choose their own legal, commercial, and technical risks, were not demonstrated clearly or convincingly enough to showcase an absolute need for such obligations’.

The Registry Stakeholder Group (RySG) is of the view that the EPDP Team has ‘struck the appropriate balance between protecting data subject’s privacy rights, fulfilling our legal obligations, and not creating unnecessary obstacles or operational challenges for our customers or our businesses’.

The Security and Stability Advisory Committee (SSAC) provided SAC118 (see <https://www.icann.org/en/system/files/files/sac-118-en.pdf>) as its minority statement, which was published in response to the EPDP Phase 2A’s Initial Report.

The above summary represents some noted points of impact among the affected Constituencies and Stakeholder Groups. Please refer to the full statements in Annex D of the [Final Report](#) for further information.

4. Period of time needed to implement recommendations

An analysis of the period of time that would likely be necessary to implement the policy.

Recommendation #1 states that *“The EPDP Team recommends that a field or fields MUST be created to facilitate differentiation between legal and natural person registration data and/or if that registration data contains personal or non-personal data. ICANN org MUST coordinate with the technical community, for example the RDAP WG, to develop any necessary standards associated with using this field or fields within EPP and the RDDS.”* It’s important to note that the creation of a field or fields would require coordination and work through the Internet Engineering Task Force (IETF). ICANN org participates voluntarily and org staff act in their individual capacity in the IETF. Therefore, ICANN org staff can coordinate with the technical community/RDAP WG to put forward relevant proposals in IETF Working Groups to develop the necessary standards; however, it is ultimately up to the IETF to make the changes.

ICANN org estimates that implementing Recommendation 1 would require coordination through the IETF for (1) EPP extension and (2) support in RDAP (i.e., jCard and JSContact). ICANN org estimates that the EPP extension could take between 12-24 months, depending on the milestones and priorities of the IETF Registration Protocols Extensions (REGEXT) Working Group. The IETF REGEXT WG is the home of the coordination effort for standards track extensions. In the case of RDAP, (i) adding support in jCard may require adding properties or values (e.g., KIND). ICANN org estimates that this should take between 6 - 12 months. (ii) Adding support in JSContact could take between 12 - 24 months depending on whether the change could make it into the current internet draft of JSContact or require an extension. The three lines of work: (a) EPP, (b) jCard, and (c) JSContact; could be done in parallel.

Recommendation #2 states that *“The EPDP Team recommends that Contracted Parties who choose to differentiate based on person type SHOULD follow the guidance¹ below and clearly document all data processing steps. However, it is not the role or responsibility of the EPDP Team to make a final determination with regard to the legal risks, as that responsibility ultimately belongs to the data controller(s).”* ICANN org would like to reiterate its previous feedback² to the EPDP Phase 2A WG with regards to guidance for Contracted Parties. ICANN Contractual Compliance enforces requirements placed on contracted parties via the RA, RAA, and ICANN Consensus Policies, in furtherance of ICANN’s mission, as recognized in the ICANN Bylaws. Guidance and best practices would exist outside these agreements and are not contractual requirements; thus, ICANN Contractual Compliance would not have contractual authority to take enforcement action against a contracted party related to its implementation of best practices or guidance, even if those best practices or guidance is developed through the EPDP Process.

¹ Please note that the ICANN org liaisons provided the EPDP Team with the following feedback on how this guidance would be implemented once adopted: <https://mm.icann.org/pipermail/gnso-epdp-team/2021-May/003904.html>.

² Please note that the ICANN org liaisons provided the EPDP Team with the following feedback on how this guidance would be implemented once adopted: <https://mm.icann.org/pipermail/gnso-epdp-team/2021-May/003904.html>.

5. External advice (if any)

The advice of any outside advisors relied upon, which should be accompanied by a detailed statement of the advisor's (i) qualifications and relevant experience; and (ii) potential conflicts of interest.

As part of phase 1 and phase 2, the law firm Bird & Bird provided guidance on the topics under consideration that were reviewed and referenced by the EPDP Phase 2A Team as deemed appropriate:

- Phase 1 Memo - Legal v. Natural: [Natural vs. Legal Memo.docx](#)
- Phase 2 Memo - Legal v. Natural: [CONSENT \(Priority 2 - Question 2\).docx](#)
- Phase 2 (Bird & Bird): [PSEUDONYMIZED EMAIL ADDRESSES \(Priority 2 - Question 1\).docx](#)

Furthermore, background briefings were provided to the Team on each topic, which included further references and background information relevant to the discussion (see <https://community.icann.org/x/fojzC>).

6. Final Report Submission

The Phase 2A Final Report of the EPDP Team was submitted to the GNSO Council on 3 September 2021³ and can be found here in full: [Final Report](#). The recommendations are included as an annex to this report.

Translations of the Final Report have been requested in all the other official languages of the United Nations.

³ Note, an updated version was submitted to the GNSO Council on 13 September 2021 as some EPDP Team members had requested additional time to finalize their minority statements (see <https://mm.icann.org/pipermail/council/2021-September/024980.html>).

7. Council Deliberations

A copy of the minutes of the Council deliberation on the policy issue, including all opinions expressed during such deliberation, accompanied by a description of who expressed such opinions.

Philippe Fouquart, GNSO Chair, provided background to the motion, noting that the Final Report was submitted on the 03 September 2021 and that all minority statements were subsequently submitted on the 13th September 2021. The GNSO Council September meeting offered the opportunity for Council discussion and further exchanges with councilors' stakeholder groups (SGs) and constituencies (C) to prepare for a vote at the October Council meeting. Philippe further recognised that a number of groups would have liked the Final Report recommendations to go further and that others considered the same recommendations unnecessary. He reminded councilors of the EPDP P2A Chair's, Keith Drazek, statement that the Final Report constitutes a compromise that is the maximum that could have been achieved by this group at this time. He emphasised the role of the GNSO Council as manager of the Policy Development Process (PDP), and not as one to review the discussions and decisions of the PDP team. He also acknowledged that improvements could have been made in regards to communication and interaction.

Kurt Pritz, GNSO Registry Stakeholder Group (RySG), GNSO Registry Stakeholder Group (RySG), commented on the issue of scope in regard to Recommendation 1. He stated that the RySG, having raised the scope issue, accepted the Leadership determination that Recommendation 1 was within the EPDP Charter's scope and was prepared to vote. He went on to state that the RySG did not find the points made in support of the determination in the Chair's email to be persuasive and laid out the arguments to contest each point. He indicated that the more important point is that requests by any stakeholder group for a Council determination on an issue should be honored by having a Council discussion rather than an immediate determination and that such a discussion fits within the Council's role as policy manager.

Philippe Fouquart, GNSO Chair, thanked Kurt for his comments, acknowledging the points raised were valid and that there was an opening now to discuss how to address the issue of scope in the future without creating an administrative burden.

Maxim Alzoba, RySG, suggested using a tracking tool to ensure communication is transparent and exchanges recorded to allow for easier decision making.

Greg Dibiase, GNSO Registrars Stakeholder Group (RrSG), raised that whilst the RrSG does not agree with everything in the Final Report, it recognises that the team came to an appropriate result. In his personal capacity as councilor, he added that lack of agreement in one group should not deter from the advances made in other groups and therefore in the multistakeholder model overall. He encouraged all to keep a positive perspective.

Philippe Fouquart, GNSO Chair, added that in the Internet Service Providers and Connectivity Providers constituency (ISPCP), the same appreciation of the results of the Final Report recommendations existed, but overall support of the process had prevailed.

John McElwaine, Intellectual Property Constituency (IPC), recommended for future PDP Final Reports where disagreements lie, that recommendations be voted on individually rather than as a package. He added that this would allow for suggestions for follow up actions.

Pam Little, GNSO Council Vice Chair, reminded councilors of the amendment to resolved clause 1 [accepted](#) as friendly by the seconder of the motion, Tatiana Tropina, GNSO Council Vice Chair.

GNSO councilors voted in support of the motion which met the required supermajority threshold. Juan Manuel Roja, Non Commercial Stakeholder Group (NCSG) voted via [email](#) due to Zoom connectivity issues, before the end of the vote.

There were five objections to the motion:

- Carlton Samuels, Non Contracted Party House (NCPH) NomCom Appointee (NCA): [statement](#)
- John McElwaine and Susan Payne (temporary alternate for Flip Petillion), IPC: [statement](#)
- Marie Pattullo and Mark Datysgeld, Business Constituency (BC): [statement](#)

[Vote results](#)

8. Consultations undertaken

External

The EPDP Team solicited input on these two topics as part of the early input requested during Phase 1 and Phase 2, and accordingly, the EPDP Team reviewed and considered the input provided at that point (see <https://community.icann.org/x/Ag9pBQ> and <https://community.icann.org/x/Ag9pBQ>) at part of its deliberations. The Team also considered input that was provided in response to the public comment forum on the addendum to the EPDP Phase 2 Final Report (see [Public Comment Review Tool](#)).

Also, as mandated by the GNSO's PDP Manual, the EPDP Team's Initial Report was published for [public comment](#) following its release on 3 June 2021. The EPDP Team used a Google form to facilitate review of public comments. Sixteen contributions were received from GNSO Stakeholder Groups, Constituencies, ICANN Advisory Committees, companies and organizations, in addition to one contribution from an individual. The input provided is at: https://docs.google.com/spreadsheets/d/1aRxF19pd5tEyO07_zaj7YvzOPjflBfgi4WRy-nx8yY/edit?resourcekey#gid=1754667842.

To facilitate its review of the public comments, the EPDP Team developed a set of public comment review tools (PCRTs) and discussion tables (see <https://community.icann.org/x/coMZCg>). Through online review and plenary sessions, the EPDP Team completed its review and assessment of the input provided and agreed on changes to made to the recommendations and/or report.

All of the EPDP Team's meetings are documented on its wiki [workspace](#), including its [mailing list](#), draft documents, background materials, and input received from ICANN's Supporting Organizations and Advisory Committees, including the GNSO's Stakeholder Groups and Constituencies.

Internal

In recognition of the condensed timeline the EPDP Team would be working under, the GNSO Council chose to invite two liaisons from ICANN Organization to participate directly within the EPDP Team: one liaison from ICANN's Legal Team and one liaison from ICANN's Global Domains and Strategy Division. The ICANN Org liaisons attended most of the EPDP Team calls and provided background information and [answers to questions](#) from the EPDP Team.

Similarly, two liaisons from the ICANN Board were also appointed by the ICANN Board and attended most of the EPDP Team's meetings.

9. Summary and analysis of Public Comment Forum

Summary and analysis of Public Comment Forum to provide input on the Final Recommendations from the Expedited Policy Development Process on the Temporary Specification for gTLD Registration Data as adopted by the GNSO Council prior to ICANN Board consideration.

A public comment forum will be opened to solicit feedback on the recommendations prior to ICANN Board consideration. At the time of the publication of this report, the public comment forum had not been opened yet.

10. Impact/implementation considerations from ICANN staff

The internal ICANN org implementation team will be formed to review the recommendations to analyze the implementation requirements.

Annex A: Council Resolution

Adoption of the Expedited Policy Development Process (EPDP) on the Temporary Specification Phase 2A Final Report and Recommendations

Submitted by Pam Little

Seconded by Tatiana Tropina

WHEREAS

1. On 17 May 2018, the ICANN Board adopted the Temporary Specification for gTLD Registration Data (“Temporary Specification”) pursuant to the procedures in the Registry Agreement and Registrar Accreditation Agreement concerning the establishment of Temporary Policies;
2. Following the adoption of the Temporary Specification, and per the procedure for Temporary Policies as outlined in the Registry Agreement and Registrar Accreditation Agreement, a Consensus Policy development process as set forth in ICANN's Bylaws needs to be initiated immediately and completed within a one-year time period from the implementation effective date (25 May 2018) of the Temporary Specification;
3. The GNSO Council has had a number of discussions about next steps to clarify issues around scope, timing and expectations, including a meeting between the GNSO Stakeholder Group and Constituency Chairs on 21 May 2018, the Council meeting on 24 May 2018, a meeting between the ICANN Board and the GNSO Council on 5 June 2018 and an extraordinary GNSO Council meeting on 12 June 2018;
4. Subsequently, the GNSO Council agreed to form a drafting team, consisting of Council leadership and interested Council members, to develop the EPDP Initiation Request and EPDP Team Charter. The drafting team submitted the proposed EPDP Initiation Request and EPDP Team Charter to the GNSO Council on 19 July 2018;
5. The GNSO Council approved the EPDP Initiation Request (<https://gns0.icann.org/sites/default/files/file/field-file-attach/temp-spec-gtld-rd-epdp-initiation-request-19jul18-en.pdf>) and the EPDP Team Charter (<https://gns0.icann.org/sites/default/files/file/field-file-attach/temp-spec-gtld-rd-epdp-19jul18-en.pdf>) on 19 July 2018;
6. The EPDP Team divided the work into two phases; Phase 1 completed with the adoption of the EPDP Phase 1 Final Report on 4 March 2019, at which point the GNSO Council indicated its non-objection, as required per the EPDP Team Charter, for the EPDP Team to commence work on a System for Standardized Access/Disclosure to Non-Public Registration Data (“SSAD”) as well as other topics identified in Phase 2 of the Charter and/or carried over from Phase 1 (priority 2 items);

7. The Phase 2 Final Report noted that “As a result of external dependencies and time constraints, this Final Report does not address all priority 2 items”. It furthermore noted that the EPDP Team would “consult with the GNSO Council on how to address the remaining priority 2 items”;
8. Following these consultations, the GNSO Council adopted on 21 October 2020 [instructions](#) for the EPDP Phase 2A to address the remaining priority 2 items, namely 1) differentiation between legal and natural person registration data, and 2) feasibility of unique contacts to have a uniform anonymized email address;
9. The EPDP Team commenced its deliberations on Phase 2A on 17 December 2020 (see <https://community.icann.org/x/VojzC>);
10. The EPDP has followed the prescribed EPDP steps as stated in the Bylaws, including the publication of an Initial Report for public comment (see <https://www.icann.org/public-comments/epdp-phase-2a-initial-report-2021-06-03-en>) on 3 June 2021, resulting in a Final Report delivered on 3 September 2021 with an updated version containing all minority statements submitted on 13 September 2021;
11. All recommendations received the consensus support of the EPDP Phase 2A Team but the Chair’s statement indicated that “it’s important to note that some groups felt that the work did not go as far as needed, or did not include sufficient detail, while other groups felt that certain recommendations were not appropriate or necessary”;
12. The GNSO Council has reviewed and discussed the [Final Report](#) and its recommendations.

RESOLVED

1. The GNSO Council approves the EPDP Phase 2A [Final Report](#) and recommends to the ICANN Board of Directors the adoption of the EPDP Phase 2A recommendations #1 – 4.
2. The GNSO Council requests ICANN org to convene an Implementation Review Team to work on the implementation of these recommendations. The Implementation Review Team will be tasked with assisting ICANN org in developing the implementation details for the EPDP recommendations, evaluating the proposed implementation of the recommendations as approved by the Board, and working with ICANN org to ensure that the resultant implementation conforms to the intent of the approved recommendations. The Implementation Review Team shall operate in accordance with the Implementation Review Team Principles and Guidance approved by the GNSO Council in June 2015.
3. The GNSO Council extends its sincere appreciation to the Chair, Keith Drazek, Vice Chair, Brian Beckham, EPDP Team members, alternates and support staff of the EPDP Team for their tireless efforts to deliver this Final Report.

Annex B - EPDP Phase 2A Adopted Recommendations

Differentiation Guidance

Recommendation #1

The EPDP Team recommends that a field or fields **MUST** be created to facilitate differentiation between legal and natural person registration data and/or if that registration data contains personal or non-personal data. ICANN org **MUST** coordinate with the technical community, for example the RDAP WG, to develop any necessary standards associated with using this field or fields within EPP and the RDDS.

This field or fields **MAY** be used by those Contracted Parties that differentiate between legal and natural person registration data and/or if that registration data contains personal or non-personal information. For clarity, Contracted Parties **MAY** make use of the field(s), which means that if a Contracted Party decides not to make use of the field(s), it may be left blank or may not be present. Additionally, Contracted Parties **MAY** include the field(s) in an RDDS response.

The SSAD, consistent with the EPDP Phase 2 recommendations **MUST** support the field or fields in order to facilitate integration between SSAD and the Contracted Parties' systems. These field(s) must be able to accommodate the following values:

Legal Status

- The legal status distinction was not made (default value)
- Unspecified – Indicating the Registered Name Holder and/or registrar didn't specify
- Registered Name Holder is a Natural person
- Registered Name Holder is a Legal person

Personal Data

- The presence of personal data wasn't determined (default value)
- Unspecified – Indicating the Registered Name Holder and/or registrar didn't specify
- Registration data contains personal information
- Registration data does **NOT** contain personal information

Recommendation #2

The EPDP Team recommends that Contracted Parties who choose to differentiate based on person type **SHOULD** follow the guidance⁴ below and clearly document all data processing

⁴ Please note that the ICANN org liaisons provided the EPDP Team with the following feedback on how this guidance would be implemented once adopted: <https://mm.icann.org/pipermail/gnso-epdp-team/2021-May/003904.html>.

steps. However, it is not the role or responsibility of the EPDP Team to make a final determination with regard to the legal risks, as that responsibility ultimately belongs to the data controller(s).

The GDPR protects natural persons in relation to the processing of their personal data. The GDPR does not cover the processing of personal data which concerns legal persons and in particular undertakings established as legal persons, including the name and the form of the legal person and the contact details of the legal person. [Recital 14, GDPR] This generally allows for disclosure of legal persons' data because it is outside the remit of GDPR; however, when processing legal persons' data, Contracted Parties should put safeguards in place to ensure that personally identifying data about a natural person is not disclosed within data marked as a legal person, as this is an example of information that *is* within the scope of GDPR. For more information on this distinction, please refer to the [letter](#) from the European Data Protection Board, beginning on p. 4.

1. Registrants should be allowed to self-identify as natural or legal persons. Registrars should convey this option for Registrants to self-identify as natural or legal persons (i) at the time of registration, or without undue delay after registration,⁵ and (ii) at the time the Registrant updates its contact information or without undue delay after the contact information is updated.
2. Any differentiation process must ensure that the data of natural persons is redacted from the public RDDS unless the data subject has provided their consent to publish or it may be published due to another lawful basis under the GDPR, consistent with the “data protection by design and by default” approach set forth in Article 25 of the GDPR.
3. As part of the implementation, Registrars should consider using the field(s) described in recommendation #1 in the RDDS, SSAD or their own data sets that would indicate the type of person it concerns (natural or legal) and, if legal, also the type of data it concerns (personal or non-personal data). Such flagging could facilitate review of disclosure requests and automation requirements via SSAD and the return of non-personal data of legal persons by systems other than SSAD (such as Whois or RDAP). A flagging mechanism may also assist in indicating changes to the type of data in the registration data field(s).
4. Registrars should ensure that they clearly communicate the nature and consequences of a registrant identifying as a legal person. These communications should include:
 - a. An explanation of what a legal person is in plain language that is easy to understand.
 - b. Guidance to the registrant (data subject)⁶ by the Registrar concerning the possible consequences of:
 - i. Identifying their domain name registration data as being of a legal person;
 - ii. Confirming the presence of personal data or non-personal data, and;

⁵ For clarity, registrars should ensure that if the Registrant is not given the option to self-identify at the time of registration, the option should be provided no later than 15 days from the date of registration.

⁶ Note, the Registrant may not be always be the data subject, but in all circumstances appropriate notice / consent needs to be provided to and by all parties as per applicable data protection law.

- iii. Providing consent.⁷ This is also consistent with section 3.7.7.4 of the Registrar Accreditation Agreement (RAA).
5. If the Registrants identify as legal persons and confirm that their registration data does not include personal data, then Registrars should publish the Registration Data in the publicly accessible Registration Data Directory Services.
6. Registrants (data subjects) must have an easy means to correct possible mistakes.
7. Distinguishing between legal and natural person registrants alone may not be dispositive of how the information should be treated (made public or masked), as the data provided by legal persons may include personal data that is protected under data protection law, such as GDPR.

Recommendation #3

The EPDP Team recommends, in line with GDPR Article 40 requirements for Codes of Conduct, that the above developed guidance concerning legal/natural differentiation should be considered by any possible future work within ICANN by the relevant controllers and processors in relation to the development of a GDPR Code of Conduct. For the avoidance of doubt, this Code of Conduct is separate and distinct from the Code of Conduct referenced in the RAA and/or Registry Agreements. Consistent with GDPR recital 99, “When drawing up a code of conduct, or when amending or extending such a code, associations and other bodies representing categories of controllers or processors should consult relevant stakeholders, including data subjects where feasible, and have regard to submissions received and views expressed in response to such consultations”.

Recommendation #4

The EPDP Team recommends that Contracted Parties who choose to publish an intended to be pseudonymized registrant-based or registration-based email address in the publicly accessible RDDS should evaluate the legal guidance obtained by the EPDP Team on this topic (see Annex F), as well as any other relevant guidance provided by applicable data protection authorities.

In assessing the risks, benefits, and safeguards associated with publishing an intended to be pseudonymized registrant-based or registration-based email address in the publicly accessible RDDS, Contracted Parties should at a minimum consider:

- Both registrant-based and registration-based email addresses of natural persons are likely personal data (i.e., neither approach creates anonymous data as defined under GDPR). This data is likely personal data both from the perspective of the data controller and for third parties.
- However, even if considered personal data, masking email addresses does provide benefits compared to publishing actual registrant email addresses, including: (i) demonstrating a privacy-enhancing technique/data protection by design measure

⁷ See also https://edpb.europa.eu/sites/edpb/files/files/file1/edpb_guidelines_202005_consent_en.pdf

(Article 25 GDPR); and (ii) some risk reduction relevant when conducting a legitimate interest balancing analysis for disclosure of the masked email address to third parties.

- On balance, publication of a registration-based email address likely carries lower risk than publication of registrant-based email addresses due to the amount of information a party can potentially link to a data subject based on a registrant-based email contact.
- For both registrant-based and registration-based email address publication, Contracted Parties should adopt effective measures to mitigate the availability of contact details to spammers.

