

Hi all,

Thanks to all who contributed to this discussion, both during our Council meeting last week and here on the list.

While we do not have full agreement on a path forward, my sense is there is broad recognition that the topic of RDS data accuracy is both important and complex, and most believe it will require more time than is currently available to the EPDP for its Phase 2 work on developing policy to support the Standardized System for Access and Disclosure (SSAD). Further, while the Priority 2 issues are included in the Phase 2 work plan, they are not part of the critical path to delivery of the Phase 2 Final Report on the SSAD.

With the 24 March deadline for publishing the addendum to the Initial Report, I think the prudent course of action is to follow the proposal I circulated below.

As such, I will respond to Janis and Rafik with guidance that the topic of data accuracy should be deferred/decoupled from the work of the EPDP until the Council can consider the issue further. Specifically, I will advise that:

1. Council acknowledges the importance and complexity of the topic, but also the time and resource constraints.
2. Council will discuss and consider possible next steps, including establishing a small group/scoping team to establish a framework to address the issue of registrant data accuracy across policy/contracts/procedures. This scoping team would be similar to those used to provide advice to Council on IDN Variants and Transfer Policy (both of which will likely recommend PDP initiation).
3. Council to acknowledge the possible impact of the data accuracy issue in the context of SSAD implementation and RDDS, and recognize the need to prioritize accordingly.
4. Encourage the EPDP team to submit the pending legal memo to help inform the work of any future scoping team. This should be done as soon as reasonably possible to take advantage of the existing legal and financial resources.

I'd like to note that Council could still decide to extend the work of the EPDP to cover this issue, versus establishing a new group, but we simply haven't had that conversation yet.

I look forward to our continued discussion.

Thanks and regards,
Keith

From: council <council-bounces@gns0.icann.org> **On Behalf Of** Drazek, Keith via council

Sent: Thursday, March 12, 2020 6:34 PM

To: council@gns0.icann.org

Cc: gns0-secs@icann.org

Subject: [EXTERNAL] Re: [council] Seeking guidance for EPDP - Follow up from Council Meeting and Next Steps

Hi all,

As a follow-up to Rafik's 6 March email (below) and our brief discussion during yesterday's Council meeting, I'd like to share my current thinking and propose a path forward. If anyone has views to share, please do so now; the EPDP Phase 2 Team needs our guidance in short order. I've done some additional homework since yesterday's call, so I hope I've captured everything here accurately.

1. The issue of registrant data accuracy is an important topic that deserves full and thorough consideration, including its impact on GNSO policy, contracted party agreements, and other ICANN processes such as ARS. As such, it is not only a policy issue, and there are likely non-GDPR-specific factors that will need to be considered.
2. The EPDP Team Phase 1 Final Report Recommendation #4 said, "The EPDP Team recommends that requirements related to the accuracy of registration data under the current ICANN contracts and consensus policies shall not be affected by this policy." The ICANN Board approved this recommendation without further guidance or comment.
3. There is not agreement within the EPDP on the meaning of "data accuracy" in the context of GDPR. There is disagreement over whether it is only from the perspective of the data subject or also third parties? There was a legal memo received during Phase 1 on the topic of data accuracy and a legal question was developed during Phase 2 to help clarify the meaning, but it has not been submitted.
4. The charter for the EPDP did not specify or identify the topic of data accuracy as within scope, but the EPDP Phase 1 final report included a reference to data accuracy in footnote #24. That footnote said: "The topic of accuracy as related to GDPR compliance is expected to be considered further as well as the WHOIS Accuracy Reporting System." This footnote did not specify that such further consideration take place in Phase 2, but the issue was included in the Phase 2 work plan that was approved by the GNSO Council.
5. During Phase 1, the EPDP Team requested external legal counsel guidance on the topic of accuracy in the context of GDPR, and received the following summary answer: "In sum, because compliance with the Accuracy Principle is based on a reasonableness standard, ICANN and the relevant parties will be better placed to evaluate whether these procedures are sufficient. From our vantage point, as the procedures do require affirmative steps that will help confirm accuracy, unless there is reason to believe these are insufficient, we see no clear requirement to review them."
6. There is not sufficient clarity at this time on how existing accuracy requirements have been impacted by GDPR. As such, in order to properly consider and scope further work on registrant data accuracy, more discussion is needed among interested/impacted parties, including ICANN Org.
7. The EPDP is scheduled to conclude its Phase 2 work in June with its deliberations on priority 2 items, of which accuracy is one, needing to complete by 24 March at the latest

to be included in the Final Report. Furthermore, and there is no FY21 budget assigned for its continuation beyond that time. Under these constraints (time, resources, complexity), our ability to reach a policy solution in a couple of months is highly unlikely if not impossible and could delay delivery of the Final Report on SSAD which has been identified by basically everyone as priority #1.

In light of the above, my recommended path forward for the Council and EPDP is as follows:

1. Council acknowledge the importance and complexity of the topic, but also the time and resource constraints noted above.
2. Council will discuss and consider possible next steps, including establishing a small group/scoping team to establish a framework to address the issue of registrant data accuracy across policy/contracts/procedures.
3. Council to acknowledge the possible impact of the data accuracy issue in the context of SSAD implementation and RDDS, and recognize the need to prioritize accordingly.
4. Encourage the EPDP team to submit the pending legal memo to help inform the work of any future scoping team.

I hope that strikes the right balance to ensure the work will be done, while giving the community space and time to approach the issue holistically and to carefully develop any needed policy recommendations.

I shared this with Rafik and Pam and we are in agreement.

We were asked to respond by Friday the 13th, but that doesn't leave much time for feedback, so please respond by 11:59 UTC on Monday 16 March. This will allow us to deliver our reply to the EPDP Team prior to their Tuesday call.

Thanks,
Keith