

EPDP Phase 2A Final Report

Presentation to the GNSO Council



22 September 2021

Agenda



Background

Two topics from phase 1 & 2 for further review by EPDP Team

Differentiation between Legal & Natural Person Data

- i. Whether any updates are required to the EPDP Phase 1 recommendation on this topic (“Registrars and Registry Operators are permitted to differentiate between registrations of legal and natural persons, but are not obligated to do so”);
- i. What guidance, if any, can be provided to Registrars and/or Registries who differentiate between registrations of legal and natural persons

&

Feasibility of unique contacts to have a uniform anonymized email address

- i. Whether or not unique contacts to have a uniform anonymized email address is feasible, and if feasible, whether it should be a requirement.
- i. If feasible, but not a requirement, what guidance, if any, can be provided to Contracted Parties who may want to implement uniform anonymized email addresses.

Final Report

- ⦿ Initial Report was published on 19 July (see <https://www.icann.org/public-comments/epdp-phase-2a-initial-report-2021-06-03-en>) as a tool to solicit community input on areas where there remains significant divergence
- ⦿ Following review of public comments and set of mediated conversations to facilitate mutual understanding of view points, EPDP Team delivered Final Report on 3 September
- ⦿ Updated version submitted to Council on 10 September to include minority statements submitted by a number of groups
- ⦿ Final report includes 4 recommendations, responses to Council questions and 1 proposal to the GNSO Council

Consensus Designation

- ⦿ Report and recommendations were designated to have "consensus" support but important to consider this in context of Chair's statement:

(excerpt) "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. This underscores the importance of the minority statements in understanding the full context of the Final Report recommendations."

Legal vs Natural

- i. Whether any updates are required to the EPDP Phase 1 recommendation on this topic (“Registrars and Registry Operators are permitted to differentiate between registrations of legal and natural persons, but are not obligated to do so”);

Response & Proposal to the Council

Response: The EPDP Team did not reach consensus on recommending changes to the EPDP Phase 1 recommendation #17.1 (“Registrars and Registry Operators are permitted to differentiate between registrations of legal and natural persons, but are not obligated to do so”).

Proposal to the Council (abbreviated): The EPDP Team recommends that the Council follow developments that may require further policy work to address potential conflicts or avoid market fragmentation through legislative / regulatory reports that ICANN org produces. Existing procedures to identify and scope possible future policy work should be followed following the adoption of NIS2 to assess whether further policy development is desirable / necessary.

Recommendation #1 (abbreviated)

- 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.

Legal vs. Natural

- ii. What guidance, if any, can be provided to Registrars and/or Registries who differentiate between registrations of legal and natural persons.

Recommendation #2 & #3 (abbreviated)

Recommendation #2: The EPDP Team recommends that Contracted Parties who choose to differentiate based on person type SHOULD follow the guidance as outlined in the Final Report and clearly document all data processing steps.

Recommendation #3: The EPDP Team recommends, in line with GDPR Article 40 requirements for Codes of Conduct, that the 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.

Feasibility of Unique Contacts

i. Whether or not unique contacts to have a uniform anonymized email address is feasible, and if feasible, whether it should be a requirement.

Response

The EPDP Team recognizes that it may be technically feasible to have a registrant-based email contact or a registration-based email contact. Certain stakeholders see risks and other concerns that prevent the EPDP Team from making a recommendation to require Contracted Parties to make a registrant-based or registration-based email address publicly available at this point in time. The EPDP Team does note that certain stakeholder groups have expressed the benefits of 1) a registration-based email contact for contactability purposes as concerns have been expressed with the usability of web forms and 2) a registrant-based email contact for registration correlation purposes.

Feasibility of Unique Contacts

- ii. If feasible, but not a requirement, what guidance, if any, can be provided to Contracted Parties who may want to implement uniform anonymized email addresses.

Recommendation #4 (abbreviated)

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, as well as any other relevant guidance provided by applicable data protection authorities. In addition, the EPDP Team provides a number of issues for CPs to consider when 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.

Next Steps

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- ⦿ GNSO Council to consider whether further information or briefings are helpful in preparation for a vote during the Council meeting in October.
- ⦿ Draft motion has already been circulated for review and input.
- ⦿ As it concerns EPDP recommendations, a GNSO Supermajority will be necessary to adopt these recommendations.