

Expedited Policy Development Process on the Temporary Specification for gTLD Registration Data

High Interest Topic Session



ICANN63
22 October 2018

Agenda

1

Welcome &
Introduction (EPDP
Background &
Approach)

2

Purposes for
Processing
Registration Data

3

Required Data
Processing Activities
& Processing Terms

4

Updates to other
Consensus Policies
(UDRP, URS,
Transfers)

5

Other
recommendations &
issues

6

Expected next steps
in relation to
publication of
Initial Report

Followed by Q & A

Welcome & Introduction (EPDP Background & Approach)

What is the mission and scope?



Initiated by GNSO, triggered by ICANN Board's adoption of Temp Spec



To confirm, or not, the Temp Spec as Consensus Policy by 25 May 2019



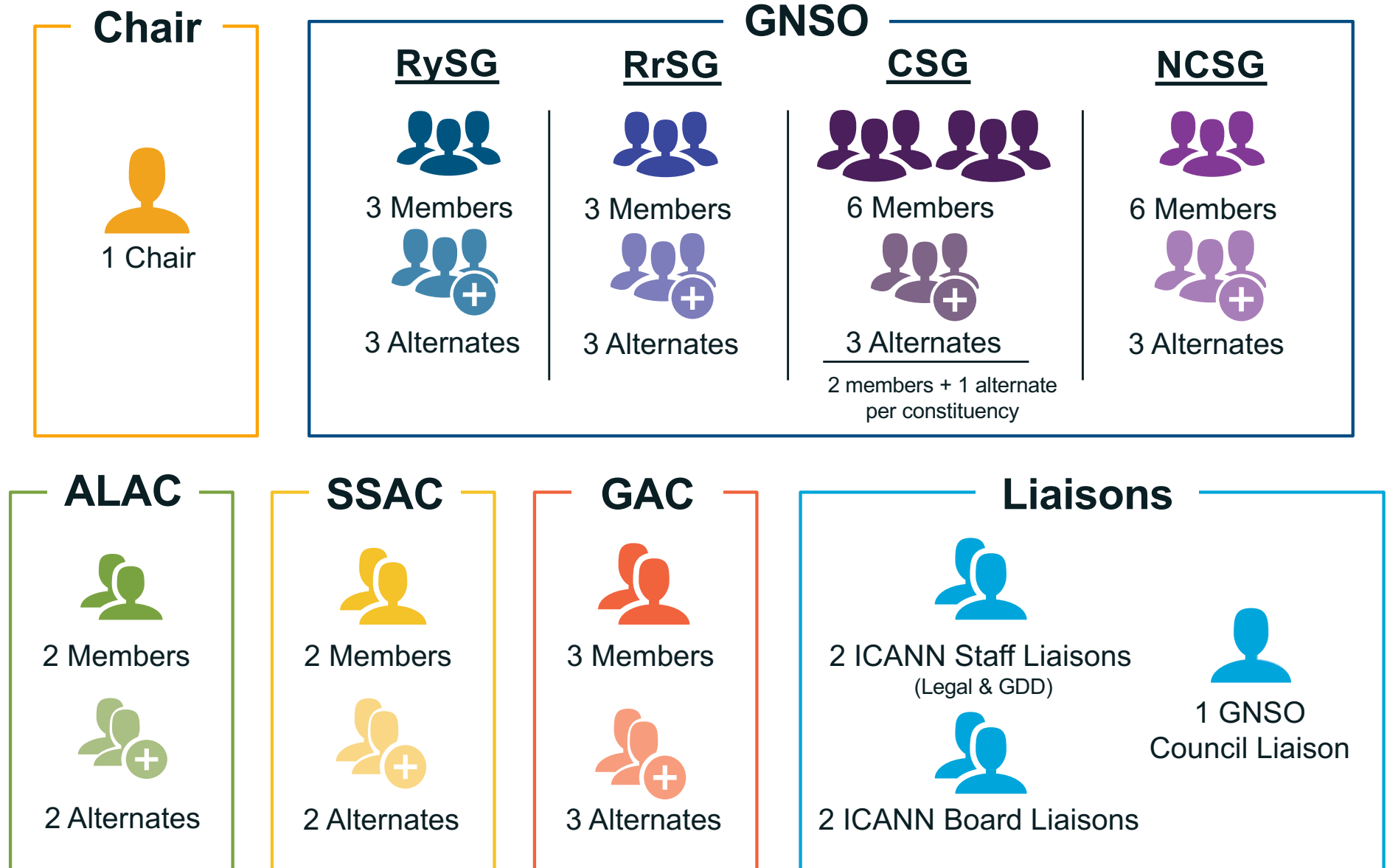
Discuss a standardized access model to nonpublic registration data

- Only after the “gating questions” specified in the [EPDP Team's Charter](#) are addressed



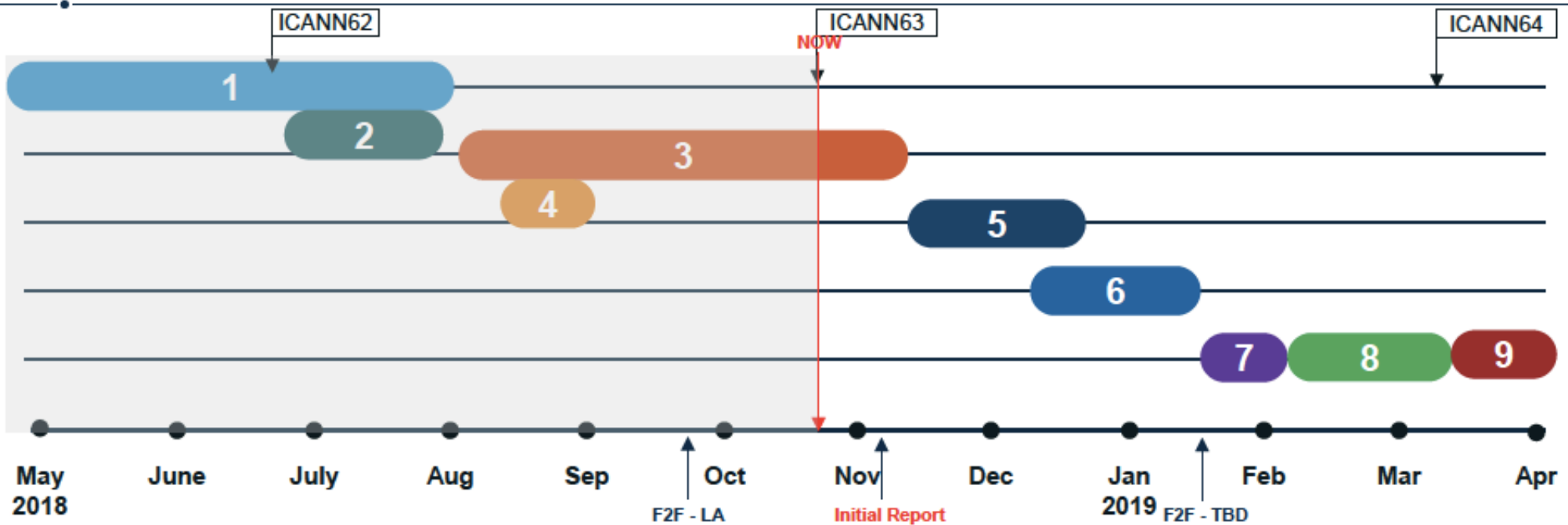
Only covers topics in the Temp Spec

EPDP Team Composition



EPDP Timeline

20 October 2018
ICANN 63



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

2 Formation of EPDP Team

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

4 Input from SO/ACs & SG/Cs

5 Public Comment on Initial Report

6 Review of Public Comment & Submission of Final Report

7 Council consideration of Final Report

8 Public Comment prior to Board consideration⁽²⁾

9 Board consideration

16 Days to Initial Report

216 Days to Temp Spec Expiration

Approach to date

- ⦿ First deliverable, Triage of Temporary Specification, provided valuable insights into key areas of disagreement (but also agreement) through series of surveys
- ⦿ Formed the basis for planning further deliberations focused on answering the charter questions by considering EDPB advice as well as ensuring GDPR Compliance
- ⦿ Various tools developed to ensure focused approach which is to result in addressing EPDP Charter Questions and developing preliminary recommendations for Initial Report
- ⦿ All aspects now coming together in Data Elements Workbooks (see next slide)

Towards an Initial Report

- ◉ Data Elements Workbooks crucial element to answering majority of the charter questions
- ◉ A number of overarching questions are also being addressed (e.g. natural vs legal person, geographic application)
- ◉ Objective is to develop answers to all charter questions and related preliminary recommendations. Where agreement is not possible, positions will be documented for further input / consideration.
- ◉ Specific issues requiring clarification and/or confirmation to be communicated to the EDPB for feedback.
- ◉ Important to prioritize what MUST be addressed by 25 May 2019 to ensure GDPR compliance versus issues that can be addressed and/or further investigated after that date.

Conclusions and/or preliminary recommendations shared in this presentation are best current thinking and may differ from what is ultimately agreed to be included in the Initial Report by the EPDP Team

Purposes for Processing Data

Purposes

Charter Questions

- Are the purposes in Temporary Specification valid and legitimate?
 - Do those purposes have a corresponding legal basis?
- Should any of the purposes be eliminated or adjusted
- Should any purposes be added?

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EPDP Team Approach

- Reviewed Temporary Specification Purposes
- Factored in GDPR requirements and EDPB Advice:
 - “essential that a clear distinction be maintained between the different processing activities that take place in the context of WHOIS and the respective purposes pursued by the various stakeholders involved”
 - “ICANN should take care not to conflate its own purposes with the interests of third parties, nor with the lawful grounds of processing which may be applicable in a particular case”
- Developed new / revised purposes and identified corresponding legal basis

Proposed Purposes (abbreviated versions)

A

Establish the rights of a Registered Name Holder (RNH) and ensuring that the RNH may exercise its rights in the Registered Name

B

Maintaining the security, stability and resiliency of the Domain Name System. This will involve the disclosure of existing registration data to legitimate third parties.

C

Enable communication or notification to the Registered Name Holder and/or their delegated agents of technical and/or administrative issues with a Registered Name

E

Provide mechanisms for safeguarding Registered Name Holders' Registration Data in the event of a business or technical failure, or other unavailability of a Registrar or Registry Operator

F

Handle contractual compliance monitoring requests, audits, and complaints submitted by Registry Operators, Registrars, Registered Name Holders, and other Internet users.

M

Coordinate the development and implementation of policies for resolution of disputes² regarding the registration of domain names

N

Enabling validation of Registered Name Holder satisfaction (fulfillment) of gTLD registration policy eligibility criteria.

Lawful Basis (as defined in GDPR)

EPDP Team mainly considered:

- ⦿ Art. 6.1(b): processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract.
- ⦿ Art. 6.1(f): processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.
- ⦿ Art. 6.1(a): Consent - the data subject has given consent to the processing of his or her personal data for one or more specific purposes.

Preliminary agreement that at a minimum all purposes have 6.1(f) as a lawful basis, although some are of the view that 6.1(b) may also apply in certain cases.

Required Data Processing Activities

Data Processing Activities

Charter Questions

- Collection of registration data by registrar
- Transfer of data from registrar to registry
- Transfer of data from registrar/registry to data escrow provider
- Transfer of data from registrar/registry to ICANN
- Publication of data by registry/registrar
- Data Retention
- Applicability of Data Processing Requirements
- Transfer of data from registry to EBERO

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EPDP Team Approach

- For each purpose the EPDP Team has determined the related processing activities (including transfer and data retention), lawful basis and data elements required
- The EPDP Team has identified the desired retention period as well as rationale
- EPDP Team is considering whether any changes need to be made to the redaction requirements in the Temporary Specification

Data Processing Terms

Data Processing Terms

Charter Questions

- ICANN's responsibilities in processing data
- Registrar's responsibilities in processing data
- Registry's responsibilities in processing data

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EPDP Team Approach

- Through its work on the data elements workbooks, the EPDP Team has identified the following for each of the purposes: (1) responsible party/parties, and (2) which party/parties is/are involved in the relevant processing steps.
- Preliminary Recommendation: The EPDP Team recommends that ICANN Org enters into the required data protection agreements such as a Data Processing Agreement (GDPR Art. 28) or Joint Controller Agreement (Art. 26), as appropriate, with other entities involved in registration data processing. These agreements are expected to set out the relationship obligations and instructions for data processing between the different parties.

Updates to other Consensus Policies (UDRP, URS, Transfers)

Updates to other consensus policies

Charter Questions

- UDRP, URS, Transfers – should Temporary Specification language be confirmed, or are additional adjustments needed?
- Sunsetting WHOIS Contractual Requirements

EPDP Team Approach

Preliminary recommendations:

- Requirements of the Temporary Specification are maintained for URS and UDRP until such time as these are superseded by recommendations that may come out of the RPMs PDP WG.
- ICANN Org should enter into data processing agreements with dispute resolution providers
- The requirements of the Temp Spec are maintained for the Transfer Policy until such time these are superseded by recommendations that may come out of the Transfer Policy review which should factor in GDPR Compliance

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Other recommendations & issues

Other recommendations & Issues

Charter Questions

- Should Contracted Parties (Registries and Registrars) be permitted or required to differentiate between registrants on a geographic basis?
- 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?
- Should existing requirements in Temp Spec in relation to reasonable access remain in place until a model for access is finalized?

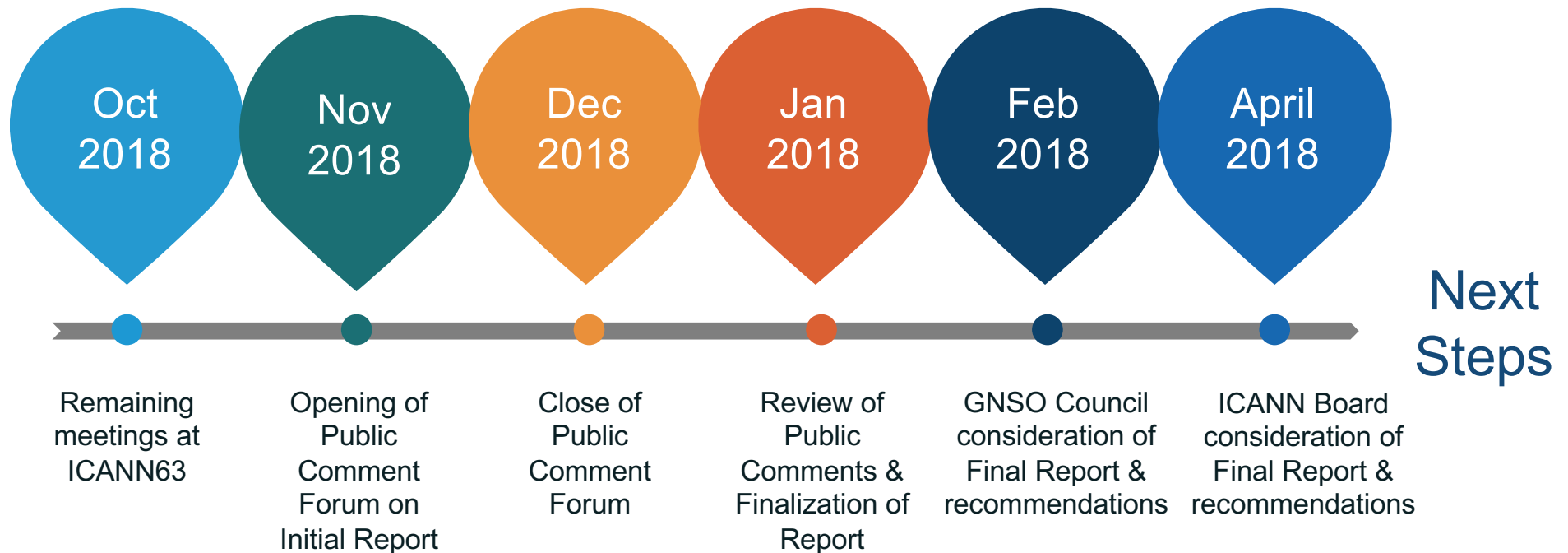
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EPDP Team Approach

- Formed small teams to deliberate on these issues
- At this time, no agreement reached although EPDP Team is considering that differentiation on geographic basis as well between legal / natural persons may be helpful, although additional work may be needed to allow for this to be possible in practice.
- Similarly, EPDP Team is considering recommending that Temp Spec requirements in relation to reasonable access remain in place but that criteria around the term “reasonable” are further explored as part of the implementation of these policy recommendations

Expected next steps in relation to publication of Initial Report

Next Steps



To Summarize

Significant work is remaining in fairly limited time. The public comment forum will be open for the minimum period required, but it will not be possible to extend beyond that. By 25 May 2019 new policy recommendations need to be adopted by the ICANN Board as on that date the Temporary Specification for gTLD Registration will expire and cannot be further renewed in that format.

Q & A

Any clarifying questions for the
EPDP Team?

Any suggestions and/or
recommendations?

Further Information



Individuals can participate as observers



Observers can:

- Subscribe to the mailing list
- listen to audio-cast and view-only Adobe Connect of all meetings
- be a public consultation respondent



Learn about the EPDP and its work:

<https://community.icann.org/x/IYEpbQ>



Get involved:

<https://www.icann.org/news/announcement-2018-07-19-en>

Engage with ICANN – Thank You and Questions



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