

# EPDP Team Meeting

14 August 2018

Meeting 4

# Agenda

---

1. Roll Call & SOI Updates
2. Welcome and Updates from EPDP Chair
3. Summary of responses to EPDP Input Survey Part 2
  - a) Results for Sections 5-7 (Requirements Applicable to Registry Operators and Registrars)
  - b) Appendices B (Supplemental Data Escrow Requirements) & F (Bulk Registration Data Access to ICANN)
4. Substantive Discussion of Temporary Specification (Sections 5-7 + Appendices B & F)
  - a) Part 2 of Survey: <https://www.surveymonkey.com/r/7BMRCNS>
  - b) Responses and issue summaries are in the Spreadsheet accompanying this agenda
5. Wrap and confirm next meeting to be scheduled for Thursday 16 August at 13.00 UTC. (Part 3 Survey results due Wednesday, 15 August by close of business.)

# High-level Overview of EPDP Input Survey Part 2 Results

# Summary of Responses

	RrSG	GAC	NCSG	ALAC	SSAC	ISPCP	IPC	BC	RySG
Sections 5.1, 5.2	No	Yes	No	No	Yes	No	Yes	No	No
Sections 5.3 - 5.5	No	Yes	Yes	No	Yes	No	Yes	Yes	No
Section 5.6	No	Yes	Yes	No	Yes	No	Yes	No	Yes
Sections 6.1 - 6.3.2	NSO	No	Yes	Yes	Yes	No	Yes	No	No
Sections 7.1 - 7.1.8	No	No	No	Yes	Yes	No	Yes	Yes	NSO
Sections 7.1.9 - 7.1.15	No	Yes	Yes	Yes	Yes	No	Yes	Yes	NSO
Sections 7.2 - 7.2.4	No	No	No	Yes	Yes	No	No	No	No
Sections 7.3, 7.4	No	Yes	No	Yes	No	Yes	Yes	Yes	NSO
Appendix B, #1	No	Yes	No	Yes	Yes	No	Yes	Yes	No
Appendix B, #2	No	Yes	Yes	No	Yes	Yes	Yes	Yes	No
Appendix B, #3	Yes	Yes	NSO	Yes	Yes	No	Yes	Yes	No
Appendix B, #4	Yes	Yes	NSO	Yes	Yes	No	Yes	Yes	Yes
Appendix F	Yes	Yes	NSO	Yes	Yes	No	Yes	NSO	Yes

# Substantive discussion of Temporary Specification

<u>Section 5 - Requirements</u> <u>Applicable to Registry</u> <u>Operators and Registrars</u> <u>(5.1, 5.2)</u>	<u>Section 5 - Requirements</u> <u>Applicable to Registry</u> <u>Operators and Registrars</u> <u>(5.3, 5.4, 5.5)</u>	<u>Section 5 - Requirements</u> <u>Applicable to Registry</u> <u>Operators and Registrars</u> <u>(5.6, 5.7)</u>
<p>Issue Summary:</p> <p>5.1: There are many comments but none object to the incorporation of the Appendix into the Specification via this clause.</p> <p>5.2: It was noted that the required date for the closure of SLA negotiation is past and should be reset to one quarter out or dealt with in some other way.</p> <p>Other comments state that discussions on access should not occur until after all gating questions have been answered, and Contracted Parties are data processors only to the extent necessary to fulfill the objectives clearly articulated within ICANN's</p>	<p>Issue Summary:</p> <p>5.3-5.4: Most groups support these clauses as incorporating the Appendix into the specification. There is disagreement regarding the content of the Appendices.</p> <p>5.5: Discussion required to ensure this wording adequately addresses all possible combinations of countries involved in data transfer.</p>	<p>Issue Summary:</p> <p>Many support Sections 5.6 - 5.7. ICANN &amp; this team should define "reasonable access" in Section 5.7.</p> <p>Those not in support of 5.7 state that ICANN needs to ensure that access is narrowly tailored for this purpose. There is a question as to why ICANN needs access to registration data for compliance purposes. Another group states ICANN should have full access to registration data.</p>

## Section 6 - Requirements Applicable to Registry Operators Only

(6.1, 6.2, 6.3, 6.3.1, 6.3.2, )

### Issue Summary:

Several groups support 6.1 - 6.3; one noted that (1) section 6.3.2 should be amended to reflect that approval of RRA updates is necessary and (2) the community should strive to have a single, standardized approach on GDPR provisions in general, and international transfers in particular.

Other comments: (1) amend the timeline in 6.2; (2) clarify the definition of periodic access in 6.1, the reporting requirements in Section 6.2, and the language around international data processing in 6.3; (3) Test 6.1 and 6.2 against data minimization principles

Section 7 - Requirements Applicable to Registrars Only  
(7.1 – 7.1.8)

Issue Summary:

Some comments indicated this provision is too prescriptive and, as such, is likely to: (1) give a false impression that following this direction provides full GDPR compliance, (2) not address privacy regimes in other jurisdictions, and (3) does not accommodate different business models. It would be better to generally require GDPR notice requirements.

This clause does not include ICANN’s role and notice requirements as a data controller.

Some supported this detailed direction but indicated additional detail and definition of terms (e.g., legitimate interest”) is necessary.

Section 7 - Requirements Applicable to Registrars Only  
(7.1.9 – 7.1.15)

Issue Summary:

Some groups believe more precision and detail is needed to cover all aspects of GDPR ("consent" should used as in list of defined terms), but contracted parties believe that the sections are too prescriptive and each registrar and registry must figure out how to comply given its business model.



Section 7 - Requirements Applicable to Registrars Only  
(7.2 – 7.2.4)

Issue Summary:

The potential implementers of Section 7.2 note (1) the difficulty of gaining consent to publish "additional contact information" and more clarity is needed around the purposes of collecting additional contact information; (2) the difficulty of multiple parties (other than the registrant) providing consent; (3) making each field "selectable" with regard to consent;

It is also pointed out that GDPR-compliant consent is still not defined, and that consent should be clear in any case.

Those seeking information seek to (1) accelerate the Consent capability implementation (faster than commercially reasonable) and (2) that any contact within the Whois set of contacts and others can consent to disclosure.

Section 7 - Requirements Applicable to Registrars Only  
(7.3, 7.4)

Issue Summary:

This clause is generally acceptable but the Appendix G to which it refers is likely flawed as it denigrates the position / rights of the gaining registrar. The rest of the team looks forward to a briefing by registrars of this issue so there might be agreement that the revised transfer policy is GDPR compliant.

Appendix B - Supplemental Data Escrow Requirements  
(#1)

Issue Summary:

It is suggested that this Section should be struck as the data that is escrowed under the RAA is different than Whois data and so this specification does not apply. It is also suggested that ICANN be identified as the Data Controller here for imposing this requirement and recommended that the RySG suggests that the escrow providers and contracted parties are best placed to work out how to operate escrow services in accordance with the GDPR.

Appendix B - Supplemental Data Escrow Requirements  
(#2)

Issue Summary:

There are parallels to be drawn between data escrow transfers between countries and Whois data transfers between countries - are they both subject to the safeguards listed in Chapter V and what are the implications of that to Whois access?

Also, it was pointed out that data escrow is governed by a set of agreements among ICANN (a data controller), the contracted parties and the data escrow provider and might be better left for those parties to negotiate.

Appendix B - Supplemental Data Escrow Requirements  
(#3)

Issue Summary:

Most agree with this provision but those that do not state that the ePDP needs to clarify ICANN's approach to data escrow agreements and the relationships (i.e. controller / processor) between the parties. This issue highlights the greater need to clarify roles and responsibilities of parties and the structure data sharing agreements. The escrow providers and contracted parties are best placed to work out how to operate escrow services in accordance with the GDPR.

Appendix B - Supplemental Data Escrow Requirements  
(#4)

Issue Summary:

This section is supported. It was pointed out that data escrow is governed by a set of agreements among ICANN (a data controller), the contracted parties and the data escrow provider and might be better left for those parties to negotiate.

### Issue Summary:

This section is supported. It was pointed out that domain names themselves may also be personal information and so this processing activity needs to be analyzed for purpose and legal ground.

# Wrap Up

---

Mid-course corrections to today's meeting

Next meeting to be scheduled for Thursday 16 August at 13.00 UTC

Note: Part 3 Temp Spec Survey submissions due by **Wednesday 15 August at 19:00 UTC**