

# EPDP Team Meeting

11 September 2018

Meeting #12

# Agenda

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1. Roll Call & SOI Updates
2. Welcome and Updates from EPDP Team Chair
  - Enhanced working methods
  - Update on status of GDPR training
  - Triage Report
  - Review outstanding action items
  - Other updates, if applicable
3. Next steps: Section 4, Appendix C
4. Review data matrix formed from RDS work and Thomas's chart
  - a) High-level overview of chart
  - b) Discuss proposed amendments to Chart
  - c) Agree on next steps
5. Introduction to Appendix A
6. Confirm action items and questions for ICANN Org, if any
7. Wrap and confirm next meeting for Thursday 13 Sept at 13.00 UTC.

# GDPR Training

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- 1) Online, self-paced module via IT Governance
  - 1) Log-in details should have been received from [SalesSupport@itgovernance.co.uk](mailto:SalesSupport@itgovernance.co.uk)
  - 2) All members and alternates required to follow the training
  
- 2) Follow on GDPR session with Becky Burr scheduled for Wednesday 18 September (confirmed)
  - 1) Questions to be submitted ahead of session to facilitate preparations

# Outstanding Action items

Travel Support	6 September 2018 <hr/> 13 September 2018	Applications for travel support to ICANN63 in Barcelona are due Thursday, 13 September. Please note the document that was sent with the meeting slides on 6	
Data Processing Requirements: Appendix C	4 September 2018 <hr/> 6 September 2018	Provide an illustrative joint controller agreement so that the team can differentiate between the operational elements and the policy-related elements.	Thomas Rickert
Data Processing Requirements: Appendix C	4 September 2018 <hr/> 6 September 2018	Review appendix C and indicate what aspects may need a specific mention in the policy recommendations regarding disclosure of data to third parties	Margie Milam

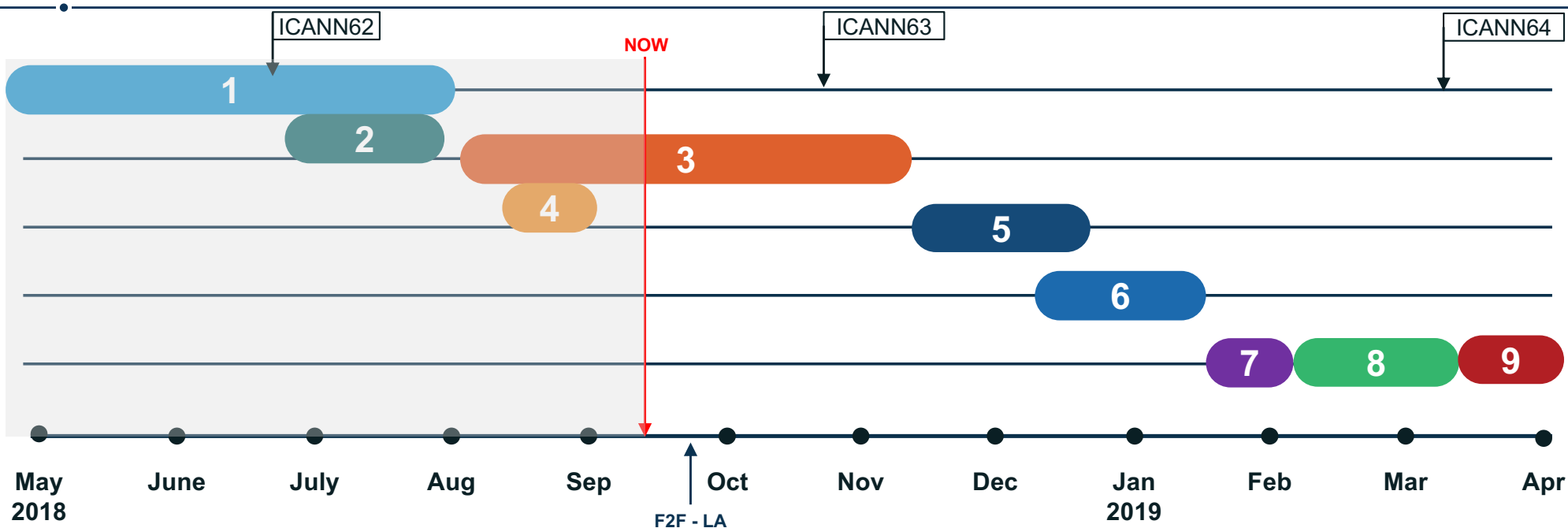
# Outstanding action items (continued)

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Purposes for Processing Data: §4.4	31 August 2018 <hr/> 5 September 2018, 22:00UTC	Propose revised language for §4.4.8.	Alex Deacon Amr Elsadr
Data Processing Requirements: Appendix C	21 August 2018	Work on a framework to outline the controller designations between ICANN and Contracted Parties for EPDP Team review / consideration	Thomas Rickert Emily Taylor

# EPDP Timeline

11 September 2018  
Meeting #12



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

**2** Formation of EPDP Team

**3** EPDP Team Deliberation & Publication of Initial Report<sup>(1)</sup>

**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<sup>(2)</sup>

**9** Board consideration

**10** Meetings to ICANN 63  
3 (F2F - LA)

**255** Days to Temp Spec Expiration

# Current Challenges

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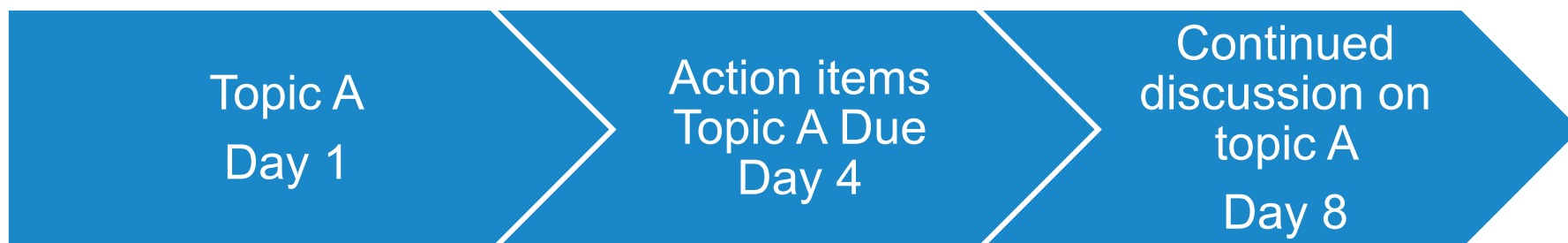
- ⦿ Cadence of meetings makes it difficult for EPDP Team members to adequately prepare and provide time to review
- ⦿ Coming back too quickly to topics just discussed does not leave enough time for reflection and consultation
- ⦿ Tendency to restate positions on the call that are already known without necessarily putting forward solutions that address all concerns and not only those of one group or perspective
- ⦿ Are we focusing sufficiently on the items that **MUST** be addressed by 5 November (publication of Initial Report) and accepting that certain items may be addressed at a later stage?
- ⦿ Failure to come to consensus will create legal uncertainty and will mean that temporary specification requirements are no longer enforceable.

# Proposed Enhancements

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- Change the sequence in which topics are dealt with so that there is at least 7 days between an initial discussion and a follow up discussion which would include review of proposed modifications.
- Commitment from members to deliver on action items at the latest on day 4 after action item being assigned.
- Priority to be given to addressing EDPB advice (category 1) and Sections where change is required to bring the section into compliance with GDPR (category 2a)

So what does this look like in practice:





# Timetable going forward

Topic	Discussion Date	Action Item Due Date	Next Discussion Date
Section 4.4	Thursday 6 September	Sunday 10 September	Thursday 13 September
Appendix A (priority sections 2, 3, 4)	Tuesday 11 September	Friday 13 September	Tuesday 18 September
Data Matrix	Tuesday 11 September	Friday 14 September	Tuesday 18 September
Appendix C	Tuesday 11 September	(if applicable) Friday 14 September	(if needed) Tuesday 18 September
Sections 5, 6, 7 (priority sections 5.3-5.5, 5.7, 6, 7.1, 7.2)	Thursday 13 September	Sunday 16 September	Thursday 20 September
Appendix B & F (priority sections B2-4, F)	Tuesday 18 September	Friday 21 September	

**Based on progress made, topics to be identified for F2F meeting as well as meetings prior to ICANN63**

# Next steps: Section 4, Appendix C

Agenda item #3

# Next Steps Section 4

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- ⊙ The work done by Benedict and Thomas: Section 4.4 to be subdivided into parts:
  - 1) Registrar purposes for processing data
  - 2) Registry purposes for processing data
  - 3) ICANN purposes for processing data
  - 4) Third-party purposes for processing data
  
- ⊙ Email discussion of retained or revised language put forward by EPDP Team for more straightforward issues
  
- ⊙ Email and meeting discussion of sections 4.4.2, 4.4.8, 4.4.9 to be inserted into this overall framework to allow for EPDP Team consideration during Thursday's meeting

# Appendix C

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- ⦿ RySG proposal to remove Appendix C as ICANN and the Contracted Parties should, by law, address the subject matter of Appendix C via separate contractual negotiations.
- ⦿ Removal of Appendix C in no way diminishes discussions regarding third-party access to registration data; e.g. Appendix A, § 4 accommodates this discussion (for say, Disclosure of non-public RDDS/WHOIS data).
- ⦿ EPDP Team members encouraged to indicate what elements, if any, should be retained (either in Appendix C or other section).
- ⦿ Request ICANN Org to confirm that subject matter of Appendix C will indeed be addressed via separate contractual negotiations and if so, what input or guidance would be needed from the EPDP Team and/or broader community.

# Data Elements

Matrix mashup: Thomas Rickert's and RDS work

# Objective

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- Charter Questions associated with data collection, what data:
  - ┆ registrars be required to collect for each of the following contacts: Registrant, Tech, Admin, Billing?"
  - ┆ is collected because it is necessary to deliver the service of fulfilling a domain registration, versus other legitimate purpose"

Then update the matrix by considering Charter Question sets regarding:

- Transfer of data from registry to registrar (charter question c)
- Transfer of data from registrar/registry to data escrow provider (charter question d)
- Transfer of data from registrar/registry to ICANN (charter question e)
- Publication of data by registrar/registry (charter question f)

All data elements currently required (just for comparison)	Data elements the Registrar must collect to perform the contract (5   b GDPR - "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")	Rationale	6   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."
	Registry-Registrar-ICANN Contract Purposes (Currently: 4.4.1, 4.4.3, 4.4.4, 4.4.5, 4.4.6, 4.4.7, 4.4.11, 4.4.12)		Third Party Legitimate Interests (Currently: 4.4.2, 4.4.8, 4.4.9, 4.4.10)
Domain Name	Domain Name		Domain Name
Registry Domain ID			
Registrar Whois Server	Registrar Whois Server		Registrar Whois Server
Registrar URL	Registrar URL		
Updated Date	Updated Date		Updated Date
Creation Date	Creation Date		Creation Date
Registry Expiry Date	Registry Expiry Date		
Registrar Registration Expiration Date	Registrar Registration Expiration Date		Registrar Registration Expiration Date
Registrar	Registrar		Registrar
Registrar IANA ID	Registrar IANA ID		
Registrar Abuse Contact Email	Registrar Abuse Contact Email, must be role contact		Registrar Abuse Contact Email
Registrar Abuse Contact Phone	Registrar Abuse Contact Phone, must be role contact		Registrar Abuse Contact Phone
Reseller	Reseller		
Domain Status	Domain Status		Domain Status
Registry Registrant ID			
Registrant Fields	Registrant Fields		Registrant Fields
• Name	• Name		• Name
• Organization (opt.)	• Organization (opt.)		• Organization (opt.)
• Street	• Street		• Street
• City	• City		• City
• State/province	• State/province		• State/province
• Postal code	• Postal code		• Postal code
• Country	• Country		• Country
• Phone	• Phone		• Phone
• Phone ext (opt.)	• Phone ext (opt.)		• Phone ext (opt.)
• Fax (opt.)	• Fax (opt.)		• Fax (opt.)
• Fax ext (opt.)	• Fax ext (opt.)		• Fax ext (opt.)
• Email	• Email		• Email
2nd E-Mail address			
Admin ID			
Admin Fields			Admin Fields
• Name			• Name
• Organization (opt.)			• Organization (opt.)
• Street			• Street
• City			• City
• State/province			• State/province
• Postal code			• Postal code
• Country			• Country
• Phone			• Phone
• Phone ext (opt.)			• Phone ext (opt.)
• Fax (opt.)			• Fax (opt.)
• Fax ext (opt.)			• Fax ext (opt.)
• Email			• Email
Tech ID			
Tech Fields			Tech Fields
• Name			• Name
• Organization (opt.)			• Organization (opt.)
• Street			• Street
• City			• City
• State/province			• State/province

Note: "other data" - this is data that is currently collected by registrars to fulfill other contractual obligations (non-WHOIS related). It is likely not within the remit nor bandwidth of this group to review this list of items but it is important to be aware of the collection of these data elements and the requirements that exist to that ICANN as well as contracted parties can ensure that this information is also collected in a manner that is GDPR compliant".

# Introduction to Appendix A

Agenda Item #5



# Appendix A - Registration Data Directory Services

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1. Registration Data Directory Services
2. Requirements for Processing Personal Data in Public RDDS Where Processing is Subject to the GDPR
3. Additional Provisions Concerning Processing Personal Data in Public RDDS Where Processing is not Subject to the GDPR
4. Access to Non-Public Registration Data
5. Publication of Additional Data Fields

# Registration Data Directory Services (§1)

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- All parties agree that RDAP will be implemented. Should the date for SLA definition (31 July 2018) be deleted or amended since it has passed? Will any date be germane in the successor document?
- There is some uncertainty as to whether a search capability is / should be a contractual requirement. Is the Search Capability paragraph (which places GDPR-required restrictions on the use of search) necessary?
- Do the restrictions in this section address the risks associated with the aggregation of data?

# Requirements for Processing Personal Data (§2.1 – 2.3)

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## EDBP advice (legal persons):

- *The GDPR does not apply to 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. While the contact details of a legal person are outside the scope of the GDPR, the contact details concerning natural persons are within the scope of the GDPR, as well as any other information relating to an identified or identifiable natural person.*
- *The mere fact that a registrant is a legal person does not necessarily justify unlimited publication of personal data relating to natural persons who work for or represent that organization, such as natural persons who manage administrative or technical issues on behalf of the registrant.*
- *For example, the publication of the personal email address of a technical contact person consisting of firstname.lastname@company.com can reveal information regarding their current employer as well as their role within the organization. Together with the address of the registrant, it may also reveal information about his or her place of work.*
- *In light of these considerations, the EDPB considers that personal data identifying individual employees (or third parties) acting on behalf of the registrant should not be made publically available by default in the context of WHOIS. If the registrant provides (or the registrar ensures) generic contact email information (e.g. admin@domain.com), the EDPB does not consider that the publication of such data in the context of WHOIS would be unlawful as such.*

# Req'ts for Processing Personal Data (§§2.1–2.3, §3)

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- Is §2.1 (when coupled with §3) overly broad in that:
  - i GDPR data restrictions can be applied globally and include entities (registrars, registries, registrant) located outside the EEA, and
  - i data restrictions need not be applied to Legal persons where personal data is not included in the record? (Can legal/natural distinctions be made a priori? Is attempting to distinguish these differences implementable?)
  
- § 2.3: Should data in addition to what is specified in the Temporary Specification as personal data be redacted (e.g., organization name, city, postal code) or taken off the redacted list (e.g., email address)?
  
- The Temporary Specification mentions "consent" without a requirement or specification for such. Should this group take that up?

# Requirements for Processing Personal Data (§2.4)

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## **EDBP advice (admin / technical contact)**

*The EDPB considers that registrants should in principle not be required to provide personal data directly identifying individual employees (or third parties) fulfilling the administrative or technical functions on behalf of the registrant. Instead, registrants should be provided with the option of providing contact details for persons other than themselves if they wish to delegate these functions and facilitate direct communication with the persons concerned. It should therefore be made clear, as part of the registration process, that the registrant is free to:*

- (1) designate the same person as the registrant (or its representative) as the administrative or technical contact; or*
- (2) provide contact information which does not directly identify the administrative or technical contact person concerned (e.g., admin@company.com).*

# Access to Non-Public Registration Data (§4)

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## EDPB Advice (logging):

- *Appropriate logging mechanisms should be in place to log any access to non-public personal data.*
- *Demonstrable compliance with such logging is the security obligation of controllers*
- *Active communication (pushing) of log information to the registrant or third parties is not required. ICANN and other controllers must ensure that logging information is not disclosed to unauthorized entities, in particular with a view of not jeopardizing legitimate law enforcement activities.*
- *Data subject rights, including the right of access, must however be accommodated unless one of the exceptions under the GDPR applies or if national legislation provides for a restriction in accordance with the GDPR (article 23).*

# Access to Non-Public Registration Data (§4)

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§4.1: See Alex Deacon's recommendation above; should this section be modified as not all disclosure of data will take place on the basis of Art. 6(1)(f) of the GDPR?

§4.2:

- What is meant by "reasonable" access? Should "reasonable" be deleted?
- There is concern that individual decisions or rulings will be construed as rules of law and be implemented haphazardly by registrars. Instead, should case law be interpreted and the appendices to this Policy be updated via some mechanism?

# Publication of Additional Data Fields (§5)

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- Should there should be some measure of standardization of the output for additional data fields?
- Given Alan Woods' recommendation for removing Appendix C, should reference to it here be deleted?



# Next Steps

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- Appendix A, sections 2, 3 and 4 identified as priority 1 and 2a items
- Volunteers to put forward proposed modifications for these sections based on deliberations to date, also factoring in other input provided to date on these sections.
- Proposed modifications to be shared by Friday 13 September at the latest.
- EPDP Team to review and discuss proposed modifications via the mailing list ahead of next meeting during which this topic will be discussed (Tuesday 18 September)

# Wrap Up

Agenda item #6 & #7

# Wrap Up

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Review actions items and questions for ICANN Org, if any

Next meeting to be scheduled for Thursday 13 September at 13.00  
UTC