

Attendance: 27 Members

Alan Greenberg (ALAC)
Alan Woods (RySG)
Alex Deacon - IPC
Amr Elsadr (NCSG)
Ayden Férdeline (NCSG)
Ben Butler (SSAC)
Benedict Addis - SSAC
Chris Lewis-Evans (GAC)
Diane Plaut
Emily Taylor
Esteban Lescano
Farzaneh Badii (NCSG)
Hadia Elminiawi - ALAC
James Bladel

Julf Helsingius
Kavouss Arasteh
Kristina Rosette (RySG)
Kurt Pritz
Laureen Kapin
Marc Anderson (RySG)
Margie Milam
Mark Svancarek (BC)
Matt Serlin (RrSG)
Milton Mueller
Rafik Dammak
Stephanie Perrin
Thomas Rickert (ISPCP)

On audio only: none

Apologies: Ashley Heineman (GAC), Georgios Tselentis (GAC), Chris Disspain (ICANN Board), Leon Sanchez (ICANN Board)

Alternates: Laureen Kapin (GAC), Chris Lewis Evans (GAC)

View only Adobe Connect: 39

Audio Cast (for Alternates and Observers) peak: 9

Staff: Caitlin Tubergen, Marika Konings, Trang Nguyen (ICANN Org Liaison), Berry Cobb, Daniel Halloran (ICANN org Liaison-Legal), Terri Agnew, Julie Bisland

AC Chat:

Julie Bisland: (11/1/2018 07:14) Welcome to the EPDP Team meeting #22 on Thursday, 1 November 2018

Julie Bisland: (07:14) EPDP Wiki Meeting Page: <https://community.icann.org/x/pg68BQ>

Ayden Férdeline (NCSG): (07:51) Hello all

Julf Helsingius (NCSG): (07:57) Are teh meeting times fixed in UTC, or will we switch when the US switches back from daylight savings time?

Julf Helsingius (NCSG): (07:58) Thanks, Terri!

Julf Helsingius (NCSG): (07:58) Europe already switched :)

Rafik Dammak (GNSO Council Liaison): (08:02) hello all

Stephanie Perrin: (08:03) is the sound on or is it just me?

Marika Konings: (08:03) For those not having filled out the doodle poll, please go to:

https://urldefense.proofpoint.com/v2/url?u=https-3A_doodle.com_poll_yad2rwnncrvi7hd9&d=DwlFaQ&c=FmY1u3PJp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=QiF-05YzARosRvTYd84AB_UYInlydmFcjNmBM5XgySw&m=ZkDUU1Hrf7I43NE6Z55I6Ts-MO2sG_p3Ue2Kerkj5uM&s=vE-eUF0x9h6evJaCNILWlqueckeSdpDPMbpNW2inS9g&e=

Marika Konings: (08:03) @Stephanie - sound is on.

Thomas Rickert (ISPCP): (08:03) Hi all!

Kavouss Arasteh 2 (GAC): (08:03) Kurt, I HAVE A SHORT ANNOUNCEMENT REGARDING itu election

Terri Agnew: (08:04) @Stephanie, let me know if you need a dial out on the telephone

Farzaneh Badii (NCSG): (08:04) ITU election?

Stephanie Perrin (NCSG): (08:04) Thanks Terri, I have a small tech problem with my computer, a dailaout would be great.

Terri Agnew: (08:04) Give the op a few minutes and they will connect you.

Esteban Lescano: (08:05) Hi everyone!!

Kristina Rosette (RySG): (08:05) All - Milton, Amr and I had a productive call yesterday. I have an action item to propose some text changes to N to address the concerns we discussed, and they have the action item to draft a couple questions that we may include in the initial report.

Kurt Pritz: (08:06) @Kristina - Do you want to have time at this meeting?

Kristina Rosette (RySG): (08:06) @Kurt - no, because I haven't had a chance to do that drafting yet.

Kurt Pritz: (08:06) OK - thanks - sounds positive

Kristina Rosette (RySG): (08:07) @Kurt - it was.

Margie Milam (BC): (08:07) BC will submit by tomorrow small team comments

Margie Milam (BC): (08:07) Yes - I'll send the UDRP details by tomorrow

Caitlin Tubergen: (08:08) Thank you, Margie.

Caitlin Tubergen: (08:08) Thank you for the update, Kristina.

Thomas Rickert (ISPCP): (08:11) So we will publish the report without legal vetting and we will only have 1 public comment period?

Thomas Rickert (ISPCP): (08:12) That sounds like quite a brave plan.

Margie Milam (BC): (08:13) I agree with Kristina

Marika Konings: (08:14) This timeline maps out the required steps, but the EPDP Team has the flexibility to put out additional documents for community input, taking into account the overall timeline / deadlines.

Kristina Rosette (RySG): (08:15) I think it would be helpful to provide - perhaps in connection with the Initial Report publication - an overview of the timeline and the point just made so the community has the benefit of that information.

Marika Konings: (08:16) The EPDP Team could also consider other vehicles for obtaining input should there be changes / updates, for example in the form of a webinar, or other type of community outreach event?

Kristina Rosette (RySG): (08:17) I read optional as referring to the public forum discussion.

Marika Konings: (08:17) @Kristina, that is correct

Marika Konings: (08:17) it is not related to the items that are below that, only public forum discussion is optional

Marika Konings: (08:17) all numbered steps are required

Kristina Rosette (RySG): (08:18) I do think it's incumbent on all of us to make very clear to our respective communities THAT THERE WILL BE NO EXTENSIONS OF THE PUBLIC COMMENT PERIOD. (Yes, intentional use of "shouty caps.")

Caitlin Tubergen: (08:20) Review Purpose E Data Elements Workbook (see <https://community.icann.org/display/EOTSFGRD/e.+Data+Elements+Workbooks?preview=/96207076/96213062/Purpose%20E%20-%20Ry%20-%20Data+Elements+Processing+Workbook%20-%2023%20October%202018.docx> and https://community.icann.org/display/EOTSFGRD/e.+Data+Elements+Workbooks?preview=/96207076/96212013/Purpose%20E%20-%20Rr%20-%20Data+Elements+Processing+Workbook%20-%2022%20October%202018_clean.docx)

Thomas Rickert (ISPCP): (08:25) DPAs to be updated? Are there any?

Thomas Rickert (ISPCP): (08:26) AFAIK there are none.

Marika Konings: (08:26) @Thomas, draft recommendation is: Draft Recommendation: Data processing agreements are necessary to ensure GDPR compliance. Recognizing that different escrow agreements exist depending on the TLD, the working group recommends that ICANN and/or the registry review the applicable escrow agreement and where necessary negotiate new GDPR compliant escrow agreements.

Thomas Rickert (ISPCP): (08:27) There are escrow agreements, but no DPAs.

James Bladel (RrSG): (08:27) Well said, Marc.

Emily Taylor (RrSG): (08:29) Thanks Marc

Terri Agnew: (08:29) finding the line

Stephanie Perrin (NCSG): (08:31) Did we ever decide that reviewing the escrow agreements is in scope? There are quite a few things necessary for GDPR compliance that we determined was out of scope for this EPDP.

Benedict Addis - SSAC: (08:35) Escrow is part of the RDDS "flow" so it seems logical that it should be included.

Amr Elsadr (NCSG): (08:35) Apologies for being late. Confused scheduling.

Alan Woods (RySG): (08:36) I agree with Thomas on this.

Berry Cobb: (08:36) @Thomas - we can make a reference back to Purpose A regarding transparency to the Registrant/Data Subject. And we can make notation/reference here under E-PA1.

Kristina Rosette (RySG): (08:37) hard to hear you, Emily.

Diane Plaut (IPC): (08:37) Agreed, Thomas, requirement under GDPR - no Kurt, this is to set forth clear purpose the data subject upon collection

Berry Cobb: (08:37) @Emily - will do.

Thomas Rickert (ISPCP): (08:37) Berry, I guess it can be done in A about we should cross-reference that here as well.

Marc Anderson (RySG): (08:37) I agree with Thomas - When I filled out the worksheet I assumed ICANN as the data controller and 6(1)f as the legal basis

Thomas Rickert (ISPCP): (08:38) Alan G, right.

Margie Milam (BC): (08:39) Agree with Alan about the specificity needed to be disclosed

Alex Deacon - IPC: (08:40) we need to apply this specificity to all purposes we are defining.

Berry Cobb: (08:41) To Marc's point, I tried to reflect that in the graphic that Escrow is sent to the EBERO Provider.

Berry Cobb: (08:41) is sent = disclosed

Berry Cobb: (08:43) @Marc - I will cut/paste that language here to the E-Ry purpose. You are right, change of from/to jurisdiction needs to be considered.

James Bladel (RrSG): (08:45) @Alan G. - Not exactly...

Marc Anderson (RySG): (08:45) I'm not sure I followed Alan's point

Alan Greenberg (ALAC): (08:47) There is certainly a difference in timing and urgency. Going out for bid is after the EBERO process.

Alan Greenberg (ALAC): (08:47) Whereas for registry, we go directly to the final registrar

Thomas Rickert (ISPCP): (08:50) In my view 61f is the only valid route to take.

Thomas Rickert (ISPCP): (08:50) Just my personal view, though.

Alan Woods (RySG): (08:51) +1 thomas

Alan Woods (RySG): (08:51) (and Marc of course)

Amr Elsadr (NCSG): (08:51) I believe 61f is more appropriate. In fact, I believe 61b should be replaced with 61f along side E-PA4. Not sure why 61b is there.

Matt Serlin (RrSG): (08:52) +1 to Marc

Hadia Elminiawi - ALAC: (08:53) apologies for being late - I got confused with the timing,

Amr Elsadr (NCSG): (08:53) Same here, Hadia. Just logged on.

Berry Cobb: (08:53) @Amr - can you speak to the 6.1.f for E-PA4 to get it on the record?
Amr Elsadr (NCSG): (08:53) Sure.
Thomas Rickert (ISPCP): (08:54) A robust 6 I f is better than a risky 6 I b in my view
Julf Helsingius (NCSG): (08:54) Agree about 6.1 f
Thomas Rickert (ISPCP): (08:54) 6 I f I guess will hold water.
Amr Elsadr (NCSG): (08:55) @Marc: +1
Thomas Rickert (ISPCP): (08:55) Data is processed, yes, but it is in the interest of securing the RNH's interests.
Amr Elsadr (NCSG): (08:55) Exactly right, Marc.
Berry Cobb: (08:55) @Thomas - can you also provide your opinion about E-PA4 currently shown as a 6.1.b?
Thomas Rickert (ISPCP): (08:57) @Berry - as retention for the purpose of escrow is part of the 6 I f transmission to the escrow agent, I think it would be a 6 I f as well.
Berry Cobb: (08:58) @Amr - I think you take your hand down. Thomas' comment covers it.
Thomas Rickert (ISPCP): (08:58) I think it is difficult to argue that transmission to escrow is 6 I f and the retention of that data is then 6 I b.
Diane Plaut (IPC): (08:59) Kurt I have legal input
Berry Cobb: (09:00) original by Rr
Alan Woods (RySG): (09:00) the registry collects the data from the registrar for many purposes, including escrow
Thomas Rickert (ISPCP): (09:00) It is always the collection via the Rr.
Emily Taylor (RrSG): (09:00) @AlanG - we're talking about subsequent processing of data that has already been collected
Thomas Rickert (ISPCP): (09:00) The Ry does not collect data from the data subjects directly.
Amr Elsadr (NCSG): (09:02) @Berry: I would add that if E-PA4 being required is a result of a contract between ICANN Org and Data Escrow Agent providers, 61b cannot be the lawful basis. For 61b to be applicable, the data subject would have to be a party to that contract, and the PA would have to be necessary to perform this contract.
Margie Milam (BC): (09:03) that's what I was trying to say - Alan captured my point
Alex Deacon - IPC: (09:03) +1 Alan
Milton Mueller (NCSG): (09:03) Alan's analysis is not correct, I think he needs to read what Amr said above.,
Berry Cobb: (09:03) @Amr - Thank you. will add that to the E-PA4 rationale.
Amr Elsadr (NCSG): (09:03) Thanks, Berry.
Thomas Rickert (ISPCP): (09:03) Amr said it well, AlanG.
Milton Mueller (NCSG): (09:04) Escrow is required by ICANN, and not necessarily by the registrar or registry that the RNH has a contract with.
Diane Plaut (IPC): (09:04) ok I will take a dial out
Alan Greenberg (ALAC): (09:05) I wasn't saying that it was a result of the contract with the escrow provider.
Alan Greenberg (ALAC): (09:05) But it is not a die-in-the-ditch issue for me.
Terri Agnew: (09:06) @Diane, I sent you a private AC chat
Julie Bisland: (09:06) not yet, Kurt
Thomas Rickert (ISPCP): (09:06) Audio is really getting ugly now
James Bladel (RrSG): (09:06) Agree, Kurt. Let's move on.
Milton Mueller (NCSG): (09:07) so we move on without finishing anything, as usual?
Milton Mueller (NCSG): (09:07) we passed an arbitrary time line and just drop everything and start something anew?

James Bladel (RrSG): (09:07) No, we note that it is 6(1)(f) with a possible 6(1)(b) as another option.

Margie Milam (BC): (09:07) it doesnt require strict privity of contract - but it has to be integral to the service that the registrant is signing up for

Marika Konings: (09:08) @Milton - like with other purposes where we had this discussion, a note will be made in the report as an item that further input will be requested from the EDPB.

Marika Konings: (09:08) As James said :-)

Berry Cobb: (09:08) @Marc - that is how I understand it. Based on the action will update accordingly.

Thomas Rickert (ISPCP): (09:08) We are not collecting additional data, but we are also collecting the data for the purpose of escrowing it.

Diane Plaut (IPC): (09:08) Agreed Margie but the privity has to exist and the scoep of the contract can be framed to support the privity

Milton Mueller (NCSG): (09:09) That's an important point, Marc.

Amr Elsadr (NCSG): (09:09) Thanks for making that clear, Marc.

Milton Mueller (NCSG): (09:09) @Marika: What are the outstanding issues? can't we attempt to identify and resolve points of disagreement?

Milton Mueller (NCSG): (09:09) they don't seem very big to me

Alan Woods (RySG): (09:09) well said Marc!

Alan Greenberg (ALAC): (09:09) We are all agreeing that this is necessary and we are trying to do the best we can at getting the words right. But the end point is the same so let's move on.

Diane Plaut (IPC): (09:10) Understood Marc

Alan Greenberg (ALAC): (09:10) Better phrased by Marc.

James Bladel (RrSG): (09:10) +1 Marc.

Alan Woods (RySG): (09:10) +1 Amr

Hadia Elminiawi - ALAC: (09:10) ok Marc I am also comfortable with 61(f) for EPA2 and EPA3 - and i don't think we need EPA1 in here

Milton Mueller (NCSG): (09:11) Agree with Hadia.

Marika Konings: (09:11) @Milton - we will go there next with the overview of the Initial Report. But there seem to be some questions that EDBP input may be needed on - when 6(1)b vs. 6(1)f can be applied may be one of those as there is obvious disagreement within the group over when it is applicable.

Alan Greenberg (ALAC): (09:11) Then let's stop talking about it.

Thomas Rickert (ISPCP): (09:11) @Hadia, EPA1 needs to be added as well as it is an additional purpose for the collection.

Milton Mueller (NCSG): (09:11) @ Marika

Milton Mueller (NCSG): (09:11) @ Marika I see no obvious disagreement in the group

Marika Konings: (09:12) It çan be downloaded from here:
<https://community.icann.org/display/EOTSFGRD/2018-11-01+EPDP+Team+call+%2322>

Margie Milam (BC): (09:12) Sorry Milton -- I there is disagreement

Stephanie Perrin (NCSG): (09:12) Amr has explained it well. This is a processing activity for normal business continuity requirements. Not a new purpose.

Milton Mueller (NCSG): (09:13) Yes

Hadia Elminiawi - ALAC: (09:13) @thomas but do we collect data specifically for escrowing? we escrow the data that is already there

Milton Mueller (NCSG): (09:13) There is rough consensus, I see one SG raising questions

Alan Woods (RySG): (09:14) i agree with Milton here Marc's point was very well made, and I find it difficult to see why you continue to ahve a disagreement here Margie?

Hadia Elminiawi - ALAC: (09:14) @Thomas so suppose that we have no data, shall we collect some data only for the purpose of escrowing

Milton Mueller (NCSG): (09:15) I don't even understand why it would matter to BC
Thomas Rickert (ISPCP): (09:19) @Hadia. In that case we would need to collect exactly what is collected anyway under purpose A
Berry Cobb: (09:25) Note, over the weekend, the workbooks will be combined into one document. Suggested edits/changes will take place from a clean form at that point.
Hadia Elminiawi - ALAC: (09:26) @Thomas and how different is the data established here as required for collection for the purpose of escrowing than that of purpose A
Thomas Rickert (ISPCP): (09:26) @Hadia it is just collected for different purposes
Berry Cobb: (09:27) @Thomas @Hadia - I think my action to update the two Escrow workbooks will conform to your discussion here in the chat.
Milton Mueller (NCSG): (09:28) Recommendation #2 as I recall did NOT specify "abuse or IP" just "legitimate third party interests"
Hadia Elminiawi - ALAC: (09:28) @Berry - sure
Milton Mueller (NCSG): (09:29) After working on the Purposes for several months as "lettered" elements (A, B, C, etc.) in the report the purposes are numbered. Will this cause confusion in the EPDP group? Should we retain the letters?
Marika Konings: (09:31) @Milton - one reason was to move from letters to numbers was that it might be confusing for the broader community to see letters with a clear gap / letters missing.
Milton Mueller (NCSG): (09:31) Hmm, you could designate deleted purposes as deleted. e.g., H - deleted
Thomas Rickert (ISPCP): (09:32) I would even offer brief rationales as to what happened to the missing letters, why they were deleted e.g.
Matt Serlin (RrSG): (09:32) I think I'd prefer to see his language before commenting...
Stephanie Perrin (NCSG): (09:33) Agree with Thomas, we need to discuss what is not there as much as what is there.
Amr Elsadr (NCSG): (09:33) @Matt: +1
Marika Konings: (09:33) @Thomas / Stephanie - please feel free to suggest language to that end.
Benedict Addis - SSAC: (09:33) Thanks Marika, yes that would be really appreciated
Terri Agnew: (09:33) finding the line
Marika Konings: (09:34) with regards to letters / numbers, maybe we can add something like 'also referenced to by the EPDP Team as Purpose A)?
Marika Konings: (09:34) so the linkage is clear, but we move to a consistent numbering sequence
Milton Mueller (NCSG): (09:35) That's a good proposal, Marika, as far as I am concerned
Benedict Addis - SSAC: (09:35) Purpose letters are really clear and I think we should keep them
Milton Mueller (NCSG): (09:35) assuming the public comments dont end up adding new ones
Marika Konings: (09:35) I cannot take credit for it - Rafik suggested it :-)
Milton Mueller (NCSG): (09:35) Well I see Benedict dissents. I tend to agree with him that lettering is more distinct, but I agree with you that consistent sequence is preferable
Milton Mueller (NCSG): (09:37) @ Marika, @Kurt, in Rec #2, we had agreed to remove "regarding abuse or intellectual property"
Kurt Pritz: (09:37) Purpose letters are clear to us but not to the reader. I think this document is for the reader and not for our somewhat esoteric (i.e., not sequential) lettering convention.
Kurt Pritz: (09:37) @Milton thank you
Milton Mueller (NCSG): (09:37) closing comment: let's adjourn~
Milton Mueller (NCSG): (09:38) :0
James Bladel (RrSG): (09:38) thx.
Emily Taylor (RrSG): (09:38) Thanks Kurt
Hadia Elminiawi - ALAC: (09:38) thank you all bye

Marika Konings: (09:38) @Milton - our recollection was that it was removed from the purpose statement, but retained in the additional recommendation?

Thomas Rickert (ISPCP): (09:38) Bye all

Rafik Dammak (GNSO Council Liaison): (09:38) thanks all

Chris Lewis-Evans (GAC - alternate): (09:38) Thanks all

Julf Helsingius: (09:38) Thanks!

Benedict Addis - SSAC: (09:38) Thanks all, that was really productive!