Geographical Differentiation

Current Situation:

The Temporary Specification, in Appendix A, section 2.1, indicates which registrars (based on geographical considerations) must comply with GDPR personal data publication restrictions.

Appendix A, section 3 states: “Registry Operator and Registrar MAY apply the requirements in Section 2 of this Appendix (i) where it has a commercially reasonable purpose to do so ,or (ii) where it is not technically feasible to limit application of the requirements as provided in Section 2.1 of this Appendix.”

On 21 November 2018, the European Data Protection Board (EDPB) published additional [guidelines](https://edpb.europa.eu/our-work-tools/public-consultations/2018/guidelines-32018-territorial-scope-gdpr-article-3_en) on the territorial scope of the GDPR (Article 3)(Guideline 3/2018).

The EPDP team noted: (1) the complex environment faced by contracted parties in making geographical distinctions among registered name holders and also (2) the “rules engine” postulated by the [Expert Working Group on gTLD Directory Services](https://www.icann.org/en/system/files/files/final-report-06jun14-en.pdf) (the “EWG”).

Final Report language might include:

Currently, Registry Operator and Registrar MAY apply the requirements in the Temporary Specification Appendix A, section 2 of this Appendix (i) where it has a commercially reasonable purpose to do so, or (ii) where it is not technically feasible to limit application of the requirements as provided in Section 2.1 of this Appendix.

In the meantime, the EPDP Team will:

1. seek additional clarity to that provided in the latest EDPB Guidelines to determine if a set of criteria (specifically establishment and targeting criteria) can be developed that enables Registry Operators and Registrars to readily differentiate between those registered name holders falling under GDPR restrictions and those that do not,

and

1. will instruct ICANN to undertake an initial feasibility study of a “rules engine”, an information system to apply data protection laws, including direction that the study be of limited scope and budget before directed research commences and design parameters are determined, and that, depending on the outcome, the EPDP Team may recommend further work on a rules engine or similar mechanism.