**EPDP Team on the Temporary Specification for gTLD Registration Data**

**Final Report Recommendation Summaries – Degination of Consensus**

**Introduction**

As described in the accompanying email, below is the second set of Recommendations and the Chair’s designation as to the level of Consensus on each. Each contains the shorthand title and the wording of the recommendation in the final report. It is important to note that the shorthand title does not appear in the final report, just the recommendation itself plus the accompanying explanation that you can read in the currently posted version of the final report.

Also, the GNSO Guidelines for working group decision making are included below the tables.

In a slight contravention to the standard practice, I have used the label, “Full Consensus / Consensus” as a signal to the GNSO Council that we have reached a consensus position on these issues but also as a salute to or indiction of the degree of teamwork and compromise that has taken place. Either term has an equivalent on the Council discussion.

On this second set, please revert to me by the end of Thursday if you disagree with my assessment and if you will provide a statement for the final report. Remember that you can support a consensus position and still provide a statement.

**Cluster #2 – Recommendations considered finalized**

| **Purpose / Recommendation #** | **Final Language** | **Chair Proposed**  **Designation** | **Notes** | |
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| Recommendation #2 - Commitment to consider a system for Standardized Access to non-public Registration Data | In accordance with the EPDP Team Charter and in line with Purpose #2, the EPDP Team undertakes to make a recommendation pertaining to a standardised model for lawful disclosure of non-public Registration Data (referred to in the Charter as ’Standardised Access’) now that the gating questions in the charter have been answered. This will include addressing questions such as:   * Whether such a system should be adopted * What are the legitimate purposes for third parties to access registration data? * What are the eligibility criteria for access to non-public Registration data? * Do those parties/groups consist of different types of third-party requestors? * What data elements should each user/party have access to?   In this context, the EPDP team will consider amongst other issues, disclosure in the course of intellectual property infringement and DNS abuse cases.  There is a need to confirm that disclosure for legitimate purposes is not incompatible with the purposes for which such data has been collected. | Full Consensus / Consensus | Annotations in Final Report:  Purpose 2 should not preclude disclosure in the course of investigating intellectual property infringement.  The EPDP recognizes that ICANN has a responsibility to foster the openness, interoperability, resilience, security and/or stability of the DNS in accordance with its stated mission (citation required). It may have a purpose to require actors in the ecosystem to respond to data disclosure requests that are related to the security, stability and resilience of the system. The proposed Purpose 2 in this report is a placeholder, pending further legal analysis of the controller/joint controller relationship, and consultation with the EDPB. The EPDP recommends that further work be done in phase 2 on these issues, including a review of a limited purpose related to the enforcement of contracted party accountability for disclosure of personal data to legitimate requests. |
| Recommendation #3 - Requirements related to accuracy | The EPDP Team recommends that requirements related to the accuracy of registration data under the current ICANN contracts and consensus policies shall not be affected by this policy. | Full Consensus / Consensus | Annotation in Final Report: The topic of accuracy as related to GDPR compliance is expected to be considered further as well as the WHOIS Accuracy Reporting System. |
| Recommendation #15 - URS / UDRP | The EPDP Team recommends that, except as provided below, for the new policy on gTLD registration data, the requirements of the Temporary Specification are maintained in relation to URS and UDRP until such time as these are superseded by recommendations from the RPMs PDP WG and/or policies from the EPDP regarding disclosure:  (i) Revise the second sentence of Section 1.2 of Appendix D to "In such an event, Complainant may file a complaint against an unidentified Respondent and the Provider shall provide the Complainant with the relevant contact details of the Registered Name Holder after being presented with a complaint against an unidentified Respondent;  and (ii) Revise the second sentence of Section 1.2 of Appendix E to "In such an event, Complainant may file a complaint against an unidentified Respondent and the Provider shall provide the Complainant with the] relevant contact details of the Registered Name Holder after being presented with a complaint against an unidentified Respondent”. | Full Consensus / Consensus |  | |
| Recommendation #16 - Instructions for RPM PDP WG | The EPDP Team also recommends that the GNSO Council instructs the review of all RPMs PDP WG to consider, as part of its deliberations, whether there is a need to update existing requirements to clarify that a complainant must only be required to insert the publicly-available RDDS data for the domain name(s) at issue in its initial complaint. The EPDP Team also recommends the GNSO Council to instruct the RPMs PDP WG to consider whether upon receiving updated RDDS data (if any), the complainant must be given the opportunity to file an amended complaint containing the updated respondent information. | Full Consensus / Consensus |  | |
| Recommendation #18 - Data processing agreements with dispute resolution providers (incl. Question #4) | The EPDP Team recommends that ICANN Org must enter into appropriate data processing agreements with dispute resolution providers in which, amongst other items, the data retention period is specifically addressed. | Full Consensus / Consensus |  | |
| Recommendation #19 - Transfer Policy | The EPDP Team recommends that for the new policy on gTLD registration data, the requirements of the Temporary Specification are maintained in relation to the Transfer Policy until such time these are superseded by recommendations that may come out of the Transfer Policy review that is being undertaken by the GNSO Council. | Full Consensus / Consensus |  | |
| Recommendation #20 - Input to Transfer Policy review (incl. Question #5) | The EPDP Team recommends that the GNSO Council, as part of its review of the Transfer Policy, specifically requests the review of the implications, as well as adjustments, that may be needed to the Transfer Policy as a result of GDPR, with great urgency. | Full Consensus / Consensus |  | |
| Recommendation #21 - Data processing agreements with non-Contracted Party entities involved in registration data processing | The EPDP Team recommends that ICANN Org enters into required data protection agreements such as a Data Processing Agreement (GDPR Art. 28) or Joint Controller  Agreement (Art. 26), as appropriate, with the non-Contracted Party entities involved in registration data processing such as data escrow providers and EBERO providers. These agreements are expected to set out the relationship obligations and instructions for data processing between the different parties. | Full Consensus / Consensus |  | |

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| Recommendation #6 - Escrow Providers | 1. The EPDP Team recommends that ICANN Org develops legally-compliant data processing agreements with the data escrow providers. 2. The EPDP Team recommends updates to the contractual requirements for registries and registrars to transfer data that they process to the data escrow provider to ensure consistency with the data elements listed below (for illustrative purposes, see relevant workbooks in Annex D that analyze the purpose to provide mechanisms for safeguarding Registered Name Holders' Registration Data). 3. The data elements to be transferred by Registries and Registrars to data escrow providers are:   [Data elements table] | Full Consensus / Consensus |  |
| New – Consent to publish additional information | The EPDP Team recommends that, as soon as commercially reasonable, Registrar must provide the opportunity for the Registered Name Holder to provide its Consent to publish additional contact information. | Full Consensus / Consensus |  |

**For Reference: GNSO WG Guidelines – SECTION 3.6 Standard Methodology for Making Decisions:**

The Chair will be responsible for designating each position as having one of the following designations:[[1]](#footnote-1)

* + **Full consensus** - when no one in the group speaks against the recommendation in its last readings. This is also sometimes referred to as **Unanimous Consensus.**
  + **Consensus** - a position where only a small minority disagrees, but most agree.[[2]](#footnote-2)
  + **Strong support but significant opposition** - a position where, while most of the group supports a recommendation, there are a significant number of those who do not support it.
  + **Divergence** (also referred to as **No Consensus**) - a position where there isn't strong support for any particular position, but many different points of view. Sometimes this is due to irreconcilable differences of opinion and sometimes it is due to the fact that no one has a particularly strong or convincing viewpoint, but the members of the group agree that it is worth listing the issue in the report nonetheless.
  + **Minority View** - refers to a proposal where a small number of people support the recommendation. This can happen in response to a **Consensus**, **Strong support but significant opposition**, and **No Consensus;** or, it can happen in cases where there is neither support nor opposition to a suggestion made by a small number of individuals.

In cases of **Consensus**, **Strong support but significant opposition**, and **No Consensus**, an effort should be made to document that variance in viewpoint and to present any **Minority View** recommendations that may have been made. Documentation of **Minority View** recommendations normally depends on text offered by the proponent(s). In all cases of **Divergence,** the WG Chair should encourage the submission of minority viewpoint(s).

The recommended method for discovering the consensus level designation on recommendations should work as follows:

1. After the group has discussed an issue long enough for all issues to have been raised, understood and discussed, the Chair, or Co-Chairs, make an evaluation of the designation and publish it for the group to review.
2. After the group has discussed the Chair's estimation of designation, the Chair, or Co-Chairs, should reevaluate and publish an updated evaluation.
3. Steps (i) and (ii) should continue until the Chair/Co-Chairs make an evaluation that is accepted by the group.
4. iv. In rare case, a Chair may decide that the use of polls is reasonable. Some of the reasons for this might be:
   * A decision needs to be made within a time frame that does not allow for the natural process of iteration and settling on a designation to occur.
   * It becomes obvious after several iterations that it is impossible to arrive at a designation. This will happen most often when trying to discriminate between **Consensus** and **Strong support but Significant Opposition** or between **Strong support but Significant Opposition** and **Divergence.**

Care should be taken in using polls that they do not become votes. A liability with the use of polls is that, in situations where there is **Divergence** or **Strong Opposition**, there are often disagreements about the meanings of the poll questions or of the poll results.

Based upon the WG's needs, the Chair may direct that WG participants do not have to have their name explicitly associated with any Full Consensus or Consensus view/position. However, in all other cases and in those cases where a group member represents the minority viewpoint, their name must be explicitly linked, especially in those cases where polls where taken.

**[…]**

Consensus calls should always involve the entire Working Group and, for this reason, should take place on the designated mailing list to ensure that all Working Group members have the opportunity to fully participate in the consensus process. It is the role of the Chair to designate which level of consensus is reached and announce this designation to the Working Group. Member(s) of the Working Group should be able to challenge the designation of the Chair as part of the Working Group discussion.

1. The designations “Full consensus,” “Consensus,” and “Strong support but significant opposition” may also be used to signify levels of “consensus against” a particular recommendation if the consensus position of the Working Group warrants it. If this is the case, any “Minority View” will be in favor of the particular recommendation. It is expected that designations of “consensus against” will be rare and Working Groups are encouraged to draft (and revise) recommendations so that a level of consensus can be expressed “for” rather than “against” a recommendation. However, it is recognized that there can be times when a “consensus against” designation is both appropriate and unavoidable as a practical matter. A “consensus against” position should be distinguished from a position of “Divergence” (or “No Consensus”), which is applied where no consensus has emerged either for or against a recommendation (i.e., the consensus level of the Working Group cannot be described as “Full consensus,” “Consensus” or “Strong support but significant opposition” either for or against a recommendation). [↑](#footnote-ref-1)
2. For those that are unfamiliar with ICANN usage, you may associate the definition of ‘Consensus’ with other definitions and terms of art such as rough consensus or near consensus. It should be noted, however, that in the case of a GNSO PDP originated Working Group, all reports, especially Final Reports, must restrict themselves to the term ‘Consensus’ as this may have legal implications. [↑](#footnote-ref-2)