**EPDP Team F2F Meeting – ICANN64**

*9 March 2019*

1. Intro from GNSO Chair, Keith Drazek

* Council adopted Final Report for phase 1 during its meeting on 4 March and provided its non-objection to commence deliberations for phase 2
* Important for EPDP Team to keep momentum, even though there is no external deadline, there is still an urgency to get this part of the work done.
* At this stage Council does not have an intention of changing the charter as it is of the view that it is still fit for purpose, but the Council may provide additional guidance / input in its role as manager of the PDP

1. Overview of the agenda (see <https://community.icann.org/x/iKQWBg>)
2. Tour de Table

* Representative of each group to provide a statement on its commitments, objectives and expectations

(for full statements, please review the recording / transcript)

**RySG** (see <https://mm.icann.org/pipermail/gnso-epdp-team/2019-March/001775.html>)

* Commercially reasonable and implementable
* Flexibility to go back to stakeholder group with correct resources and agreement once we further discuss timeline and work plans

**RrSG**

* Commitment to the work and necessity of successful outcome of Phase 1
* Significant reservations regarding ongoing commitment – unsustainable and stretched the limits
* We have lost one member already due to the time commitment – Emily Taylor she cannot continue with Phase 2
* Others have said they would continue conditionally
* Implementable, scalable, and legally compliant

**ISPCP**

* Phase 2 – when it comes to the access model – this is uncharted territory
* Imperative to get advice from EPDB and the GAC representatives
* We will need a robust rationale as to how this would work legally
* Charter has a way to deal with how consensus calls are conducted – if you think that the Chair has inadequately determined consensus. What has caused frustration – the IPC and BC have voted the report down b/c of how the consensus call was done. We should try to avoid this for Phase 2.

**BC**

* Recognize this will not be at the same pace as Phase 1
* Need more extensive legal support in Phase 2
* We need more specificity and clarity around some of the issues raised in Phase 1

**IPC**

* This phase is as important as the Phase 1 work, and the charter is fit for purpose
* The recommendation of the Phase 1 Final Report is just a portion of the issues we were chartered to address

**NCSG**

* Echo concerns about the workload – we do not desire to continue at that level/pace
* It is critically important to do a legal review of the report in Phase 1 before starting in Phase 2 – does the report meet the legal obligations and also get indication of where the pitfalls may be going forward.

**GAC**

* It is of critical importance to address the legitimate users of WHOIS as well
* This should have a conclusion date – perhaps not on the timeline of Phase 1
* Hoping to change the way alternates are viewed
* We should look at the scope very carefully – it is what needs to happen from a policy perspective

**SSAC**

* Committed to completing Phase 2 work
* Phase 2 is where the rubber meets the road for most groups

**ALAC**

* Serve and protect the interests of end users
* Recommendation for legal vs. natural
* Exploring the ability to differentiate geographically
* Concerns regarding how consensus is built

1. Phase 2 overview

See mind map and slides (see [EPDP Team Phase 2](https://community.icann.org/download/attachments/102147208/EPDP%20Team%20Phase%202%20.pdf?version=1&modificationDate=1551754437000&api=v2) and [EPDP Team Day 1 - updated 8 March 2019](https://community.icann.org/download/attachments/102147208/EPDP%20Team%20Day%201%20-%20updated%208%20March%202019.pdf?version=1&modificationDate=1552049752000&api=v2))

3 buckets:

* 1. System for Standardized Access to non-public registration data
* 2. Annex to Temporary Specification – important issues for further community action
* 3. Issues deferred from EPDP Phase 1

Issues highlighted in the mind map in yellow are issues deferred from the Final Report.

**Re: System for Standardized Access to Non-Public Registration Data:**

Charter questions:

* Purposes for accessing data, credentialing and terms of access/compliance with terms of use
* See also Phase 1 Rec#3 questions: whether a system should be adopted
* What are the legitimate purposes for third parties to access data
* What data elements should each party have access to
* Intersection of TSG work

**Temp Spec Annex – Important Issues**

* Continuing community work to develop an accreditation and access model that complies with GDPR
* Feasibility of requiring unique contacts to have a uniform anonymized email address across DN registrations
* Develop methods to provide potential URS and UDRP complainants with sufficient access to support good faith filing of complaints
* Consistent process for continued access
* Distinguishing b/w legal and natural persons (see Rec. 17)
* Limitations in terms of query volume

**Items Deferred from Phase 1**

* Rec 2 – additional purposes
* Rec 14 – PPSAI
* Rec 15 – Data retention
* Rec 11 – City Redaction
* Outstanding legal questions

Questions / discussion:

* What is meant with non-public data? May not only include personal data – anything that is collected but not publicly available.
* Maybe using the wrong word – should be talking about disclosure. Should use that terminology in EPDP Team’s work.
* Should not refer to WHOIS but RDDS.
* Question of legal support / legal counsel to phase 2. – what is available? Couple of legal outstanding items. Bird & Bird still engaged, but not certain about end date for when services are retained. Legal guidance is helpful but at the end of the day, DPAs are the authority here.
* Continue mediation support
* Need to make sure to get the terminology right – could bring to Council issue of terminology. May need to distinguish it from what has been defined in phase 1.
* Interaction with EDPB
* Consider working on buckets separately and get one part of work shipped to EDPB while work is carried out on other bucket.
* Should geographic application be added to the mind-map as issues deferred from phase 1? Although there was a legal outstanding question, the group did not specify / agree that this should be deferred to phase 2. The legal guidance may determine whether the recommendation goes far enough, but not necessarily to revisit it.

1. Brainstorming exercise

Comments / questions:

* Focus on # of hours for meetings per week, not total time that people may spend on it
* Charter expressed need to be able to make time available to participate – if someone is not able to do so, consider replacement.
* Is there a link between the implementation data for phase 1 and the date of completion for phase 2. No direct link, although some of the work in phase 2 could overwrite the recommendations for phase 1 (for example, purpose 2 was specifically identified as a placeholder).
* When does EPDP start meeting again? Need to agree on schedule going forward.
* Urgency is important, but there needs to be an informed workplan that informs the work plan. Need more clarity about how work is structured before an artificial date is picked.
* EPDP Team needs to focus on the policy questions that are associated with that work, implementation would follow in a next phase.

(See summary slides of the brainstorming exercise for further details)

**Working methods** (comments)

* Consider also one extended plenary call per week. Concerns about calls longer than 1,5 hours.
* Also need to factor in prioritization.
* Should not be too rigid so it can be updated / adjusted as needed.
* How much time is necessary between meetings to assess results and prepare for the next meeting on the same topic? Need to be mindful of the time that is needed for staff in between meetings. How much lead time on a topic? That also affects preparation.
* Best way to tackle topics:Work ahead may lend itself to parallel work tracks with different cadences. Parallel tracks may affect resources available in different groups and could result in re-litigation – parallel tracks would not run with different groups, but in plenary session. Parallel work tracks could also have different end dates and allow for consultation with DPAs and await feedback while work continues on different tracks.
* Consider re-using small team A & B approach as that worked pretty efficiently (bring up agreements to plenary, but also refer back issues that the small team is not able to agree on)
* F2F meetings more effective because mediators were involved as they made sure the work progressed instead of circling.
* Would different Initial Reports require a charter change? Would need to consult with the Council if that is considered an issue, but PDP does not necessarily preclude having different Initial Reports, as long as the required PDP steps are followed.

**Dependencies/Interactions** (comments)

* Why is it necessary to define types of possible requestors prior to defining disclosure process/requirements – it’s important so that requirements can be defined properly
* What we need to work out – who gets what according to who they are
* It’s up to this group to work on the chewy stuff – who gets access, what type of access, etc.
* Trying to separate policy and implementation is like trying to separate a peanut butter and jelly sandwich after you’ve taken a few bites
* The report is policy agnostic – it proposes 4 models
* In Phase 1 – there was talk for the Initial Report to the EDPB but that idea was scrapped, but we recognized it would be useful to get something in front of the EDPB, so maybe in Phase 2 we should put some effort into getting something in front of the EDPB or DPA
* When it comes to review, this shouldn’t be reserved just for the legal committee – it should be put to the plenary
* Maybe the legal committee could provide recommendations to action the legal advice

**Resources** (comments)

* Team-building exercise could be very useful
* Re: conflicted understanding of OCTO’s scope – what they do. We sent them a question and we have Rec. 2 – part of the rec

**Action item**: Staff support team to develop proposed preliminary agreements for further review and discussion during Thursday’s meeting.

1. GDD update on implementation

* Defined by Consensus Policy Implementation Framework
* IPT is a group of ICANN org members
* Would there be an interim policy b/w May 29 and February 29, 2020, and the IPT would operate in b/w those dates to develop the permanent language of the persistent policy?
* The temp spec will expire on May 25 – from a compliance enforcement perspective, there would be a grace period where they could comply with the document formerly known as the Temp Spec or the new permanent policy
* We did not envision an IRT with public comments
* In order to continue to comply and for ICANN Org to be able enforce, there needs to be a policy b/c the temp spec will no longer be in existence
* Some envisioned that by end of May there would be the permanent policy with an effective date of 29 February 2020 with an addendum that would refer to the temp spec. How is this supposed to be done before 25 May?
* What we proposed is call it an interim policy and that is identical to what the temporary spec is? Implementation of real policy is more interesting b/c it consists of a number of parts – we have to write words that take the recommendations and turn them into consensus policy
* Should there be a public comment, and if not, how do we rationalize a consensus policy that not all CPs were given the opportunity to review and comment on?
* All recent implementations have all gone out for public comment since it is required under the CPIF
* For the updated policy language, we should get the language out by August to meet the timeframe, if a 6 month notification period is needed to contracted parties.
* ICANN must sent a legal notice to contracted parties – keep in mind the PDP working group provides recommendations – the recommendations are not policy language
* Assuming we cannot shorten the six-month period – language will need to be ready by the end of August

**Action item**: EPDP Team to continue the discussion during Wednesday’s implementation brainstorming session.