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| EPDP TEam Work Sheet |
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| **Topic** | **Last updated** | **Work Track / Area** |
| System for Standardized Access to Non-Public Registration Data | 15 April 2019 | 1 |

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| Issue description and/or charter questions |
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From the EPDP Team Charter:

(a) Purposes for Accessing Data – What are the unanswered policy questions that will guide implementation?

a1) Under applicable law, what are legitimate purposes for third parties to access registration data?

a2) What legal bases exist to support this access?

a3) What are the eligibility criteria for access to non-public Registration data?

a4) Do those parties/groups consist of different types of third-party requestors?

a5) What data elements should each user/party have access to based on their purposes?

a6) To what extent can we determine a set of data elements and potential scope (volume) for specific third parties and/or purposes?

a7) How can RDAP, that is technically capable, allow Registries/Registrars to accept accreditation tokens and purpose for the query? Once accreditation models are developed by the appropriate accreditors and approved by the relevant legal authorities, how can we ensure that RDAP is technically capable and is ready to accept, log and respond to the accredited requestor’s token?

(b) Credentialing – What are the unanswered policy questions that will guide implementation?

b1) How will credentials be granted and managed?

b2) Who is responsible for providing credentials?

b3) How will these credentials be integrated into registrars’/registries’ technical systems?

(c) Terms of access and compliance with terms of use – What are the unanswered policy questions that will guide implementation?

c1) What rules/policies will govern users' access to the data?

c2) What rules/policies will govern users' use of the data once accessed?

c3) Who will be responsible for establishing and enforcing these rules/policies?

c4) What, if any, sanctions or penalties will a user face for abusing the data, including future restrictions on access or compensation to data subjects whose data has been abused in addition to any sanctions already provided in applicable law?

c5) What kinds of insights will Contracted Parties have into what data is accessed and how it is used?

c6) What rights do data subjects have in ascertaining when and how their data is accessed and used?

c7) How can a third party access model accommodate differing requirements for data subject notification of data disclosure?

From EPDP Team Final Report:

EPDP Team Recommendation #3.

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.

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A standardised model for lawful disclosure of non-public Registration Data

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| legal questions |
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| **Question** | **Status** | **Owner** |
| There is a need to confirm that disclosure for legitimate purposes is not incompatible with the purposes for which such data has been collected. | (from rec #3 – to be reviewed by legal committee?) | Legal committee(?) |
| Answer the controllership and legal basis question for a system for Standardized Access to Non-Public Registration Data, assuming a technical framework consistent with the TSG, and in a way that sufficiently addresses issues related to liability and risk mitigation with the goal of decreasing liability risks to Contracted Parties through the adoption of a system for Standardized Access | (Suggested by IPC) |  |
| Legal guidance should be sought on the possibility of an accreditation-based disclosure system as such. | (Suggested by ISPCP) |  |
| The question of disclosure to non-EU law enforcement based on Art 6 I f GDPR should be presented to legal counsel. | (Suggested by ISPCP) |  |

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| Required reading |
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| **Description** | **Link** | **Required because** |
| Framework Elements for Unified Access Model for Continued Access to Full WHOIS Data | <https://www.icann.org/en/system/files/files/framework-elements-unified-access-model-for-discussion-18jun18-en.pdf> |  |
| Unified Access Model for Continued Access to Full WHOIS Data - Comparison of Models Submitted by the Community | <https://www.icann.org/en/system/files/files/draft-unified-access-model-summary-elements-18jun18-en.pdf> |  |
| Article 29 WP Opinion 2/2003 on the application of the data protection principles to the Whois directories | <https://ec.europa.eu/justice/article-29/documentation/opinion-recommendation/files/2003/wp76_en.pdf> |  |
| EWG Report Section 4c, RDS User Accreditation Principles | <https://www.icann.org/en/system/files/files/final-report-06jun14-en.pdf> |  |
| EWG Research – RDS User Accreditation RFI | [https://community.icann.org/download/attachments/45744698/EWG%20USER%20ACCREDITATION%20RFI%20SUMMARY%2013%20March%202014.pdf](https://community.icann.org/download/attachments/45744698/EWG%2520USER%2520ACCREDITATION%2520RFI%2520SUMMARY%252013%2520March%25202014.pdf) |  |
| Part 1: How it works: RDAP – 10 March 2019 | <https://64.schedule.icann.org/meetings/963337> |  |
| Part 2: Understanding RDAP and the Role it can Play in RDDS Policy - 13 March 2019 | <https://64.schedule.icann.org/meetings/961941> |  |

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| Briefings to be provided |
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| **Topic** | **Possible presenters** | **Important because** |
| RDAP | Francisco Arias, ICANN Org | Ensure a common understanding of the workings and abilities of RDAP |
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| dependencies |
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| **Describe dependency** | **Dependent on** | **Expected or recommended timing** |
| The negotiation and finalization of the data protection agreements required according to our phase 1 report are a prerequisite for much of our work in phase 2 (suggested by ISPCP) | CPs/ICANN Org |  |
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| Proposed timing and approach |
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(Staff suggestion) In order to commence this work, the EPDP Team may want to agree on certain assumptions that are to be confirmed later in the process? For example, until confirmed otherwise, the EPDP Team will assume that legal liability for contracted parties is / is not reduced in a Unified Access Model.

Possible clarifications required at the outset:

* Is the term ‘access’ correct or should it refer to ‘disclosure’?

Proposed approaches:

IPC - Work Stream One Priorities:

* Answer the gating question in Rec #3 - "Whether such a system should be adopted"
* Identify the various legitimate purposes for third parties to access registration data
* Move on to answering the charter questions on Access (a), (b) and (c) in the order listed. (We note that several of these questions have been answered in Phase 1 and also by the TSG work.)

ISPCP – Divide into:

* Development of a Universal Disclosure Model in response to requests pertaining to civil claims.
* Disclosure of data pertaining to law enforcement requests.

RrSG - For the System for Standardized Access, the sequence should be as follows:

1. Identify and document any legitimate purpose for a third-party to access non-public personal data (item “a” on the mind map)
2. Credentialing and terms of access and use

GAC –

* The GAC suggests that the EPDP immediately identify the scope of Work Stream 1 and develop a work plan for completing work no later than 12 months from the appointment of the new EPDP Chair. It should also be the expectation that considerable and demonstrable progress be made by ICANN 66 in Montreal.  Such an approach and timeframe would meet the community feedback from Kobe asking for Phase 2 of the EPDP to move forward quickly given the importance of the issues involved.