

The Registries Stakeholder Group (RySG) ePDP Team (“RySG”) submits its feedback on the two draft approaches to Phase II of the EPDP. The RySG appreciates the work by Janis Karklins and ICANN Staff reflected in these approaches.

The RySG disagrees with the characterization of the EPDP Team's objective on several grounds. First, the EPDP Team's objective is to develop policy recommendations, not necessarily "rules and requirements." Second, those policy recommendations pertain to "a standardized model for lawful disclosure of non-public Registration Data," as set forth in Phase I, Recommendation 3. Third, the current statement of the objective presupposes that data SHALL be shared with third parties, which is incorrect and inconsistent with GDPR.

The RySG agrees that the development of policy recommendations for a standardized model for lawful disclosure of non-public Registration Data should be agnostic to the modalities of that model. The distinction between a centralized and decentralized model, which apparently has disappeared from the recent draft, is an important one and the RySG believes it is critical that the EPDP Team consider both.

The RySG agrees that the EPDP Team as a whole should engage with ICANN Org on the development of policy questions that will help inform the discussions with DPAs. However, although ICANN’s engagement with the DPAs may lead to further clarity, the EPDP should not defer policy development pending consultation and engagement with the DPAs/EDPB. We should proceed with our task, implementing the data protection principles of both Privacy by Default and Privacy by Design. The EPDP should, when appropriate, rely upon the legal constructs whereby we can engage the DPAs as part of our policy development process (e.g. Art 36 prior consultations and Data Protection Impact Assessments under Section 3 of the GDPR.)

The RySG appreciates the urgency in completing this process, but the effects of enhanced workloads and tightened timelines do not result in a refined end product, as was patently clear from the closing stages of Phase I. The RySG does not support parallel work streams. The proposed working method increases the workloads of the team members who must participate in both workstreams, and provides a false impression of covering more ground. The proposed parallel work streams will lose the expertise of non-participating EPDP Team members, expedite the onset of Team fatigue, and ultimately be counterproductive.

Many Phase 1 items earmarked for WS 2 will materially affect the direction, scope and considerations of WS 1. The 2 streams contain some large interdependencies (e.g Legal v Natural), which will likely lead to reopening or re-assessment of work items. Such reopening or re-assessment will lead to frustration and delay. Rather than achieve the goal of completing Phase II work sooner the two phased approach is likely to cause delays to the overall timeline.

Further, the ICANN Board's recent decision to not adopt Recommendation 1, Purpose 2 effectively means that the EPDP Team will need to revisit it. Any change that results from re-opening the discussion of Purpose 2 is expected to impact both work streams and thus impact the overall schedule.

It is unclear why the quote from the European Commission's May 3, 2019 letter is a newly added element to the proposed work approach.

The RySG supports using clear terminology in this process to set reasonable expectations in the outcome and to ensure clear and efficient communication and work. The RySG supports ensuring that the focus of Phase II release of non-public Registration Data be considered "DISCLOSURE," consistent with Recommendation 18 of the Phase 1 final report, whereby a clear distinction between "Access" and "Disclosure" was drawn by the team.

The RySG recognizes the need for timelines, but those timelines must be realistic for the task -- not arbitrary and based on external pressures. The proposed approach does not seem unreasonable at this early stage, but seems target-based rather than based on any actual apparent assessment or even any measurable assumptions. We would like to better understand the underlying data and assumptions that led to this timeline.

The RySG is very supportive of setting a realistic target date, so long as such a timeline exists with built in "check-in" points during the intervening period. Such "check-ins" should provide the opportunity for the team to objectively reassess practical considerations of any experienced difficulties, review progress, and consider any additional complications, additions or other factors. Such check-ins should then result in a reasonable readjustment, where necessary, of our timeline.

With regard to the timeline, it is not clear why the timelines for the two WS 1 bullets -- "Deliberation on issues outlined on Slide 4" and "Coordination with Org on UAM questions" do not end simultaneously and why the latter ends 3 months before the former.