

CPH response to draft Initial Report

The Contracted Party House team thanks ICANN Staff and the EPDP Chair for providing a draft Initial Report for EPDP team review and comment.

Summary

The CPH team supports sending this document out for initial public comment, but only if it is characterized as an Interim Status Report making clear that there will be an additional public comment period once the key questions outlined below are answered and those answers are factored into the recommendations. Further, the CPH has concerns (detailed below) with some language in this draft that must be addressed before it is released for public comment. We are suggesting an additional week for the EPDP team to incorporate revisions.

Current Status and Additional Public Comment

This draft Initial Report is a snapshot of the work we have completed thus far. The CPH team proposes retitling the draft as an Interim Status Report and ensuring that all language regarding next steps is accurate in order to appropriately set the reader's expectations. There is still a significant amount of work to be done before a Final Report can be considered, and we look to the leadership team to confirm that there will be a second round of public comments before drafting a Final Report. Additionally, the CPH cannot commit to the recommendations drafted herein, as further review is needed once the remaining work items are addressed.

Significant Open Questions

The CPH team would like to highlight the following questions which remain open and which will necessarily inform the EPDP team's work, some of which are pending input from the EDPB:

- Who is/are the Controller(s) for these data processing activities?
- Who makes the disclosure decision within a centralized or hybrid SSAD model?
- Are the three Models presented all equally legally viable? How do risk and liability shift depending on the Model selected?
- What would each Model cost, and where do those funds come from? In what ways do the anticipated costs inform decisions about which Model is selected and how it is implemented?

Specific Areas of Disagreement

The CPH team notes specifically the following sections of the draft Initial Report that do not represent the agreement(s) we reached within the EPDP team. This is not to indicate that we accept the remaining sections of the Report in their entirety, but rather that these areas we have identified require modification before they are included in an Initial Report:

- ICANN Compliance is indicated in the Models and in the Preliminary Recommendation 8 as the escalation point for disclosure decision disputes
 - This was not agreed to in plenary and is not agreed to by the CPH

- ICANN Compliance is the correct decision-maker regarding an issue of contractual compliance, but determinations in relation to the substantive application of data protection regulations and laws remain the purview of the national authorities and the Courts
- The statement “The EPDP Team is of the view that a centralized model will result in increased uniformity and predictability, while a decentralized model will likely result in increased inconsistency and decreased predictability” is a mischaracterization and does not accurately depict our views or concerns. The centralized, hybrid, and decentralized models could all have the same standardized request and response requirements, allowing for predictability, but we must remember that in no case can we mandate a standard disclosure review template, as each case is individual and unique
- The section “accreditation of entities carrying out a public policy task” is a placeholder that was unfamiliar to us; the CPH team would prefer not to include a recommendation that has not been discussed in plenary, nor can we comment on substance until more information is provided

Timing Considerations

The CPH team views the changes proposed in this response as necessary before sharing the draft Initial Report for public comment; as such, we support the publication of an updated version of this document on a schedule very close to the “current plan” timeline, but not the exact December 4th start. We propose an additional week for EPDP team review and modification of the document as suggested below before releasing the draft Initial Report (as the Interim Status Report), with the public comment period starting December 9th at the earliest (or on December 11 to provide a full week). We understand that this timing change may impact Staff’s ability to compile a report on public comments prior to our January F2F meeting. Under these circumstances, we suggest not relying on a Staff Report and instead ask that EPDP team members come to the January F2F meeting in LA prepared to directly review the public comments.

The CPH team looks forward to providing a full response to the Initial Report (or Interim Status Report) at the appropriate time, and thanks the EPDP Team and ICANN Staff for their consideration of our proposed changes.

Thank you,
The Contracted Party House Team