

Addendum to: Initial Report of the Temporary Specification for gTLD Registration Data Phase 2 Expedited Policy Development Process

[Date]

Status of This Document

This is the addendum to the Initial Recommendations Report of the GNSO Expedited Policy Development Process (EPDP) Team on the Temporary Specification for gTLD Registration Data Phase 2 that has been posted for public comment.

Preamble

The objective of this addendum to the Initial Report is to document the EPDP Team's: (i) deliberations on priority 2 charter questions, (ii) preliminary recommendations, and (iii) additional identified issues to consider before the Team issues its Final Report. The EPDP Team will produce its Final Report after its review of the public comments received in response to this addendum. The EPDP Team will submit its Final Report to the GNSO Council for its consideration.

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1 Executive Summary

2 1.1 Background

3
4 The scope for the EPDP Phase 2 includes (i) discussion of a system for standardized
5 access/disclosure to nonpublic registration data, (ii) issues noted in the [Annex to the](#)
6 [Temporary Specification for gTLD Registration Data](#) (“Important Issues for Further
7 Community Action”), and (iii) issues deferred from Phase 1, e.g., legal vs natural
8 persons, redaction of city field, et. al. For further details, please see [here](#).

9
10 In order to manage its time efficiently, the EPDP Team divided these topics into priority
11 1 and priority 2 items. Priority 1 items consisted of addressing the questions and
12 developing recommendations in relation to the System for Standardized Access /
13 Disclosure to non-public registration data (SSAD), and priority 2 items included the
14 following the following topics:

- 15
- 16 ● Display of information of affiliated vs. accredited privacy / proxy providers
- 17 ● Legal vs. natural persons
- 18 ● City field redaction
- 19 ● Data retention
- 20 ● Potential Purpose for ICANN’s Office of the Chief Technology Officer
- 21 ● Feasibility of unique contacts to have a uniform anonymized email address
- 22 ● Accuracy and WHOIS Accuracy Reporting System
- 23 ● Purpose 2
- 24

25 For further information on the priority 2 items, please see the relevant worksheets
26 which can be found [here](#).

27
28 As a result of external dependencies and time constraints, the Initial Report did not
29 include any priority 2 items. However, subsequent to the publication of the Initial
30 Report, the EPDP Team turned its attention to the priority 2 items, which have been
31 documented in this addendum.

32 1.2 Preliminary Recommendations Priority 2 items

33
34
35 [TBC]

36 1.3 Conclusions and Next Steps

37
38 This addendum to the Initial Report will be posted for public comment for [X] days.
39 After the EPDP Team’s review of public comments received on this Report and its Initial

40 Report, the EPDP Team will update its Final Report and include priority 2 items, where
41 appropriate, prior to submitting the Final Report to the GNSO Council.

42 1.4 Other Relevant Sections

43

44 For a complete review of the issues and relevant interactions of this EPDP Team, please
45 review the following sections which are included in the [Initial Report](#):

- 46 ■ Documentation of who participated in the EPDP Team’s deliberations, including
47 attendance records, and links to Statements of Interest as applicable;
- 48 ■ An annex that includes the EPDP Team’s mandate as defined in the Charter
49 adopted by the GNSO Council; and
- 50 ■ Documentation on the solicitation of community input through formal SO/AC and
51 SG/C channels, including responses.

52

53

54 2 EPDP Team Approach

55 This Section provides an overview of the working methodology and approach of the
56 EPDP Team. The points outlined below are meant to provide the reader with relevant
57 background information on the EPDP Team’s deliberations and processes and should
58 not be read as representing the entirety of the efforts and deliberations of the EPDP
59 Team.

60 2.1 Working Methodology

61
62 The EPDP Team scoped the priority 2 issues early on, using standardized [worksheets](#),
63 and followed up on a number of questions with ICANN org and its external legal
64 counsel but deferred deliberations until after publication of the Initial Report on 7
65 February 2020. The Team progressed its deliberations on priority 2 items primarily
66 through conference calls scheduled one or more times per week, in addition to email
67 exchanges on its mailing list. All of the EPDP Team’s meetings are documented on its
68 wiki [workspace](#), including its [mailing list](#), draft documents, background materials, and
69 input received from ICANN’s Supporting Organizations and Advisory Committees,
70 including the GNSO’s Stakeholder Groups and Constituencies.

71 2.2 Legal Committee

72
73 Recognizing the complexity of many issues the EPDP Team was chartered to work
74 through in Phase 2, the EPDP Team requested resources for the external legal counsel
75 of Bird & Bird. To assist in preparing draft legal questions for Bird & Bird, EPDP
76 Leadership chose to assemble a Legal Committee, comprised of one member from each
77 SO/AC represented on the EPDP Team.

78
79 The Phase 2 Legal Committee worked together to review questions proposed by the
80 members EPDP Team to ensure:

- 81
- 82 1. the questions were truly legal in nature, as opposed to a policy or policy
83 implementation questions;
 - 84 2. the questions were phrased in a neutral manner, avoiding both presumed
85 outcomes as well as constituency positioning;
 - 86 3. the questions were both apposite and timely to the EPDP Team’s work; and
87 4. the limited budget for external legal counsel was used responsibly.
- 88

89 For the priority 2 work specifically, the Legal Committee unanimously agreed to send
90 two new questions to Bird & Bird. The Legal Committee also reviewed legal guidance
91 from Phase 1 as it deliberated the priority 2 items.

92

93 The full text of the questions and legal advice received in response to the questions can
94 be found [here](#).

95 2.3 Charter Questions

96
97 In addressing the priority 2 charter questions, the EPDP Team considered both (1) the
98 input provided by each group as part of the deliberations; (2) relevant input from phase
99 1; (3) the input provided by each group in response to the request for [Early Input](#) in
100 relation to the specific charter questions; (4) the required reading identified for each
101 topic in the [worksheets](#), and (5) [input](#) provided by the EPDP Team’s legal advisors, Bird
102 & Bird.
103

3 EPDP Team Deliberations and & Preliminary Recommendations concerning Priority 2 Items

The EPDP Team will not finalize its responses to the priority 2 questions and recommendations to the GNSO Council until it has conducted a thorough review of the comments received during the public comment period on this addendum to its Initial Report. At the time of publication of this addendum, no formal consensus call has been taken on these responses and preliminary recommendations; however, this addendum to the Initial Report did receive the support of the EPDP Team for publication for public comment.¹ Where applicable, differing positions have been reflected in the Report.

3.1 Display of information of affiliated vs. accredited privacy / proxy providers

During phase 1, the EPDP Team made the following recommendation:

“In the case of a domain name registration where an “affiliated” privacy/proxy service used (e.g. where data associated with a natural person is masked), Registrar (and Registry where applicable) MUST include in the public RDDS and return in response to any query full non-personal RDDS data of the privacy/proxy service, which MAY also include the existing privacy/proxy pseudonymized email.

Note, PPSAI is an approved policy that is currently going through implementation. It will be important to understand the interplay between the display of information of affiliated vs. accredited privacy / proxy providers. Based on feedback received on this topic from the PPSAI IRT, the EPDP Team may consider this further in phase 2”.

The EPDP Team agreed that as part of its consideration in phase 2 it would need to confirm that either:

1. the display of information of an affiliated vs. accredited privacy / proxy providers is addressed in the context of the implementation of PPSAI OR
2. a recommendation that confirms how accredited privacy / proxy providers may/must be identified in the public RDDS.

To confirm 1, the EPDP Team reached out to ICANN org with the following question:

¹ Following a review of public comments, the EPDP Team will take a formal consensus call before producing its Final Report.

142 “As part its work in Phase 1, the EPDP Team made the following
143 recommendation in its [Final Report](#): “In the case of a domain name registration
144 where an ‘affiliated’ privacy/proxy service used (e.g., where data associated
145 with a natural person is masked), Registrar (and Registry where applicable)
146 MUST include in the public RDDS and return in response to any query full non-
147 personal RDDS data of the privacy/proxy service, which MAY also include the
148 existing privacy/proxy pseudonymized email.”
149

150 The EPDP Team went on to note,

151
152 “PPSAI is an approved policy that is currently going through implementation. It
153 will be important to understand the interplay between the display of
154 information of affiliated vs. accredited privacy / proxy providers. Based on
155 feedback received on this topic from the PPSAI IRT, the EPDP Team may
156 consider this further in phase 2.
157

158 As you are aware, the Privacy and Proxy Services Accreditation Issues Working
159 Group recommended the following, “[t]o the extent that this is feasible, domain
160 name registrations involving P/P service providers should be clearly labelled as
161 such in WHOIS.
162

163 Can you please provide clarifying information on how this recommendation is
164 being implemented?”
165

166 ICANN org provided the following response:

167
168 “[The above] request references two recommendations, EPDP Phase 1
169 Recommendation 14 (and its accompanying note), and PPSAI Recommendation
170 4. In asking, “Can you please provide clarifying information on how this
171 recommendation is being implemented?” I understand you to be asking about
172 PPSAI Recommendation 4. The EPDP Phase 1 IRT is in the process of
173 implementing EPDP Phase 1, Recommendation 14.
174

175 As you are aware, the PPSAI implementation (and IRT) is on hold pending the
176 resolution of the EPDP Phase 2 work. There is no current activity underway.
177

178 In term of the implementation of PPSAI Recommendation 4, the PP IRT was
179 considering a proposed requirement that all privacy and proxy service providers
180 include a label, which would flag each registration as a privacy/proxy
181 registration and identify which provider is associated with that registration, in
182 the existing WHOIS output “registrant organization” field. (See Draft PPAA,
183 distributed to PP IRT 12 Sept 2018, at [https://mm.icann.org/pipermail/gdd-
184 gnso-ppsai-impl/attachments/20180913/426735f5/PPAA_12Sept_IRTMarkUp-
185 0001.pdf](https://mm.icann.org/pipermail/gdd-gnso-ppsai-impl/attachments/20180913/426735f5/PPAA_12Sept_IRTMarkUp-0001.pdf), Section 3.15).

186
187 This requirement would apply to all privacy and proxy service providers,
188 regardless of whether the provider is affiliated with a registrar or registry
189 operator or operating independently of any other contracted party. The draft
190 privacy and proxy service provider accreditation agreement does not distinguish
191 between requirements for registrar-affiliated and non-affiliated privacy and
192 proxy service providers, at the direction of the PPSAI IRT. The draft
193 requirements would require all privacy and proxy service providers to become
194 accredited to continue offering those services. This requirement for
195 accreditation would be enforced through the registrar, on the grounds that
196 accredited registrars could not knowingly accept registrations involving a
197 privacy or proxy service from an unaccredited provider (See PPSAI
198 recommendation 1, note, p. 7,
199 [https://gnso.icann.org/sites/default/files/filefield_48305/ppsai-final-07dec15-](https://gnso.icann.org/sites/default/files/filefield_48305/ppsai-final-07dec15-en.pdf)
200 [en.pdf](https://gnso.icann.org/sites/default/files/filefield_48305/ppsai-final-07dec15-en.pdf)).

201
202 Following the completion of the EPDP Phase 2 work and the Rec 27 analysis, the
203 existing draft PPSAI materials will need to be revisited to ensure consistency
204 with the EPDP-recommended requirements, and to ensure the requirements
205 and processes fit together in a manner that will create a transparent,
206 predictable, and reasonable process for all parties involved.”

207
208 The EPDP Team noted that at the time of publication of this report, the implementation
209 of the Privacy and Proxy Services Accreditation Issues (“PPSAI”) Working Group’s
210 recommendations is on hold. Accordingly, the EPDP Team phase 2 working group
211 confirms that Phase 1 Rec #14 remains in place.

212
213 The EPDP Team notes the current implementation plan for the PPSAI Working Group’s
214 recommendations contemplates that all domains registered via accredited
215 privacy/proxy services providers will be labeled or flagged as such in the domain
216 registration data. Once the policy has been implemented, clearly labelling or flagging
217 domain registrations as privacy/proxy, the EPDP Team recommends the following:

218
219 **Preliminary Recommendation #20.**

220 In the case of a domain name registration where an accredited privacy/proxy service is
221 used, e.g., where data associated with a natural person is masked, Registrar (and
222 Registry, where applicable) MUST include the full RDDS data of the accredited
223 privacy/proxy service in response to an RDDS query. The full privacy/proxy RDDS data
224 MAY also include a pseudonymized email.

225
226 Implementation notes:

- 227 1) Because accredited privacy/proxy registrations are expected to be a superset of
228 affiliated privacy/proxy registrations (as described in the EPDP phase 1

229 recommendations), this recommendation once in effect replaces or otherwise
230 supersedes EPDP phase 1 recommendation 14.
231 2) The intent of this recommendation is to provide clear instruction to registrars (and
232 registries where applicable) that where a domain registration is done via accredited
233 privacy/proxy provider, that data MUST NOT also be redacted. The working group
234 is intending that domain registration data should NOT be both redacted and
235 privacy/proxied.

236 3.2 Legal vs. Natural Persons

237

238 From the EPDP Team Phase 1 Final Report: EPDP Team Recommendation #17.

239

240 *1) The EPDP Team recommends that Registrars and Registry Operators are permitted to*
241 *differentiate between registrations of legal and natural persons, but are not obligated*
242 *to do so.*

243

244 *2) The EPDP Team recommends that as soon as possible ICANN Org undertakes a study,*
245 *for which the terms of reference are developed in consultation with the community,*
246 *that considers:*

- 247 • *The feasibility and costs including both implementation and potential*
248 *liability costs of differentiating between legal and natural persons;*
- 249 • *Examples of industries or other organizations that have successfully*
250 *differentiated between legal and natural persons;*
- 251 • *Privacy risks to registered name holders of differentiating between legal and*
252 *natural persons; and*
- 253 • *Other potential risks (if any) to registrars and registries of not*
254 *differentiating.*

255

256 *3) The EPDP Team will determine and resolve the Legal vs. Natural issue in Phase 2.*

257

258 As part of ICANN org's research for Recommendation 17.2 of the EPDP Team's Phase 1
259 Final Report, ICANN org launched a short questionnaire (see
260 <https://icannprds.typeform.com/to/ehG295>) to collect input on the risks, feasibility,
261 and costs of differentiating between legal and natural persons in registration data
262 directory services (RDDS). The questionnaire was launched in February 2020 and will
263 be open until 20 March 2020. The feedback will be integrated into the report on
264 Recommendation 17.2, which is expected to be shared with the EPDP Team in May
265 2020.

266

267 **Preliminary Conclusion – Legal vs. Natural Persons**

268 Taking into account the timing of the delivery of its Final Report, the EPDP Team will
269 not be able to consider the findings within the timeframe that has been established for
270 the delivery of the Final Report. The EPDP Team will consult with the GNSO Council on
271 if/how it is expected to consider the findings on this topic beyond its current timeline.

272 3.3 City Field Redaction

273

274 From the EPDP Team Phase 1 Final Report: EPDP Team Recommendation #11

275

276 *The EPDP Team recommends that redaction must be applied as follows to this data*
 277 *element:*

278

<i>Data Element</i>	<i>Redacted</i>
<i>Registrant Field</i>	
• <i>City</i>	<i>Yes</i>

279

280 *The EPDP Team expects to receive further legal advice on this topic, which it will*
 281 *analyze in phase 2 of its work to determine whether or not this recommendation should*
 282 *be modified.*

283

284 As part of phase 2, the EPDP Team is expected to confirm whether there needs to be a
 285 change to the phase 1 recommendation that the city field should be redacted in the
 286 public RDDs. If no change is deemed necessary, the recommendation from phase 1 will
 287 stand as it is.

288

289 As part of its deliberations, the EPDP Team considered the [legal guidance](#) provided by
 290 Bird & Bird in which it advises that further information is required in order to
 291 determine whether the Article 6(1)(f) balancing test is satisfied for universal publication
 292 of the City field in public RDDs. In particular, Bird & Bird advises the EPDP team to
 293 develop additional information regarding the benefits to third-parties and consider
 294 whether the benefits are sufficiently meaningful to justify universal publication, or only
 295 applicable to limited use cases? Additionally, Bird & Bird advises the EPDP team to
 296 consider more facts regarding the potential impact of universal publication on the
 297 rights and interests of data subjects. Following the collection of additional data, the
 298 parties should conduct a detailed assessment (as outlined below) to determine
 299 whether the third-party interests outweigh those of the data subject. (3.16-3.17)

300

301 Based on subsequent deliberations, the EPDP Team concluded that it is not able to
 302 provide a rationale that would justify universal publication of the city field. As such, the
 303 EPDP Team does NOT recommend any changes to the phase 1 recommendation that
 304 city field MUST be redacted. Some members in the EPDP Team did indicate that based
 305 on an analysis of risk, some Contracted Parties might decide to publish the city field in
 306 RDDs, which would be permissible in certain circumstances, per EPDP phase 1
 307 recommendations #16 and #17. The EPDP Team did agree to further consider whether
 308 automated disclosure of the city field within the SSAD is technically feasible and legally
 309 permissible in certain circumstances.

310 Preliminary Conclusion – City Field Redaction

311 No changes are recommended to the EPDP Phase 1 recommendation that redaction
312 must be applied to the city field.

313 3.4 Data Retention

314

315 From the EPDP Team Phase 1 Final Report: EPDP Team Recommendation #15.

316

317 *1. In order to inform its Phase 2 deliberations, the EPDP team recommends that*
318 *ICANN Org, as a matter of urgency, undertakes a review of all of its active*
319 *processes and procedures so as to identify and document the instances in which*
320 *personal data is requested from a registrar beyond the period of the 'life of the*
321 *registration'. Retention periods for specific data elements should then be*
322 *identified, documented, and relied upon to establish the required relevant and*
323 *specific minimum data retention expectations for registrars. The EPDP Team*
324 *recommends community members be invited to contribute to this data*
325 *gathering exercise by providing input on other legitimate purposes for which*
326 *different retention periods may be applicable.*

327

328 *2. In the interim, the EPDP team has recognized that the Transfer Dispute*
329 *Resolution Policy (“TDRP”) has been identified as having the longest justified*
330 *retention period of one year and has therefore recommended registrars be*
331 *required to retain only those data elements deemed necessary for the purposes*
332 *of the TDRP, for a period of fifteen months following the life of the registration*
333 *plus three months to implement the deletion, i.e., 18 months¹². This retention is*
334 *grounded on the stated policy stipulation within the TDRP that claims under the*
335 *policy may only be raised for a period of 12 months after the alleged breach (FN:*
336 *see TDRP section 2.2) of the Transfer Policy (FN: see Section 1.15 of TDRP). This*
337 *retention period does not restrict the ability of registries and registrars to retain*
338 *data elements provided in Recommendations 4 -7 for other purposes specified in*
339 *Recommendation 1 for shorter periods.*

340

341 *3. The EPDP team recognizes that Contracted Parties may have needs or*
342 *requirements for different retention periods in line with local law or other*
343 *requirements. The EPDP team notes that nothing in this recommendation, or in*
344 *separate ICANN-mandated policy, prohibits contracted parties from setting their*
345 *own retention periods, which may be longer or shorter than what is specified in*
346 *ICANN policy.*

347

348 *4. The EPDP team recommends that ICANN Org review its current data retention*
349 *waiver procedure to improve efficiency, request response times, and GDPR*
350 *compliance, e.g., if a Registrar from a certain jurisdiction is successfully granted*
351 *a data retention waiver, similarly-situated Registrars might apply the same*

352 *waiver through a notice procedure and without having to produce a separate*
353 *application.*

354

355 In response to 15.1, ICANN org provided its review to the EPDP Team on 1 November
356 2019 (see [https://mm.icann.org/pipermail/gnso-epdp-team/2019-
357 November/002747.html](https://mm.icann.org/pipermail/gnso-epdp-team/2019-
357 November/002747.html)) noting that:

358

359 “ICANN org was asked to respond to the Phase 1 recommendation 15 to
360 identify and document instances where ICANN org has a need for data beyond
361 the life of a domain name registration, with the intent of informing the Phase 2
362 deliberations. In the interim, the EPDP Phase 1 team recommended that an 18-
363 month data retention requirement be in place for registrars as part of the Phase
364 1 policy.

365

366 Implementation of the 18-month requirement is applicable to the provisions of
367 the RAA Data Retention Specification on retention of registration data
368 elements; other existing retention requirements (e.g., for records of
369 communications) are not changed.

370

371 We have identified one instance where ICANN org would be requesting data
372 from a registrar beyond the life of the registration. This instance is contractual
373 compliance functions, particularly around expiration and deletion of names.
374 ICANN org cannot investigate registrar compliance with relevant policy and
375 contractual requirements this if data is not retained.

376

377 Contractual Compliance functions do not prescribe particular data retention
378 periods and ICANN org will perform its compliance function to the extent
379 possible within the applicable period.

380

381 The RAA Data Retention Specification is not primarily in place for ICANN org to
382 use data retained by registrars, but rather to support other purposes such as
383 registrant protection, technical issue resolution, security and stability, abuse
384 mitigation, and others.”

385

386 Having considered this input, the EPDP Team reaffirms and recommends the following:

387

388 **Preliminary Recommendation #21.**

389 The EPDP Team confirms its recommendation from phase 1 that registrars be required
390 to retain only those data elements deemed necessary for the purposes of the TDRP, for
391 a period of fifteen months following the life of the registration plus three months to
392 implement the deletion, i.e., 18 months. This retention is grounded on the stated policy
393 stipulation within the TDRP that claims under the policy may only be raised for a period
394 of 12 months after the alleged breach (FN: see TDRP section 2.2) of the Transfer Policy
395 (FN: see Section 1.15 of TDRP). For clarity, this does not prevent requestors, including

396 ICANN Compliance, from requesting disclosure of these retained data elements for
397 purposes other than TDRP, but disclosure of those will be subject to relevant data
398 protection laws, e.g., does a lawful basis for disclosure exist. For the avoidance of
399 doubt, this retention period does not restrict the ability of registries and registrars to
400 retain data elements for longer periods.

401

402 Implementation Note:

403 For the avoidance of doubt, registrars are required to maintain the data for 15 months
404 following the life of the registration and MAY delete that data following the 15-month
405 period.

406 3.5 Potential Purpose for ICANN’s Office of the Chief Technology 407 Officer

408

409 From the EPDP Phase 1 Final Report:

410

411 *As part of phase 1, the EPDP Team made the following recommendation: “The*
412 *EPDP Team commits to considering in Phase 2 of its work whether additional*
413 *purposes should be considered to facilitate ICANN’s Office of the Chief*
414 *Technology Officer (OCTO) to carry out its mission (see*
415 *<https://www.icann.org/octo>). This consideration should be informed by legal*
416 *guidance on if/how provisions in the GDPR concerning research apply to ICANN*
417 *Org and the expression for the need of such pseudonymized data by ICANN.”*

418

419 The EPDP Team followed up with ICANN org on whether the status of input provided
420 during phase 1 (see <https://community.icann.org/x/ahppBQ>) has changed and/or
421 whether any legal guidance has been obtained in relation to ICANN org having a
422 qualified research position under GDPR.

423

424 ICANN Org liaisons provided their response on 25/2 noting that:

425 “On [4 December 2018](#), ICANN org provided answers to questions the EPDP Team posed
426 regarding the use of registration data by certain ICANN org functions. As part of the
427 EPDP’s Phase 2 work, the Team has asked support staff to follow-up with ICANN org on
428 whether the status of the input provided during Phase 1 has changed. Following
429 internal discussions and review of previous ICANN org responses submitted to the
430 EPDP Team, ICANN org has determined that the input provided on the use of data by
431 ICANN org departments has not changed. ICANN org has not identified additional
432 purposes for access to **non-public registration data** needed by ICANN org to support its
433 current work.

434

435 ICANN org’s contractual compliance function currently requests and processes
436 registration data directly from registries and registrars under the Registry Agreement
437 and Registrar Accreditation Agreement (RAA). This is reflected in the EPDP Team’s

438 Phase 1 Final Report under Purpose 5. Per that recommendation, ICANN contractual
439 compliance may request data directly from the registrar or registry to “i) Handle
440 contractual compliance monitoring requests and audit activities consistent with the
441 terms of the Registry agreement and the Registrar accreditation agreements and any
442 applicable data processing agreements, by processing specific data only as necessary;
443 ii) Handle compliance complaints initiated by ICANN org, or third parties consistent
444 with the terms of the Registry agreement and the Registrar accreditation
445 agreements.” Depending on the model recommended by the Team, there could be
446 advantages to using the SSAD to access data for carrying out compliance activities.
447

448 In the case of an unforeseen activity or new initiative proposed by the multistakeholder
449 community that would require ICANN org to obtain access to **non-public registration**
450 **data** for a new purpose, ICANN org would need to undertake this via a direct request to
451 contracted parties, negotiating a change to contractual requirements to obligate
452 contracted parties to provide the relevant data, or development and implementation
453 of a new consensus policy.
454

455 We understand the EPDP Team’s primary interest to be purposes for which ICANN org
456 would access **non-public data** through the SSAD, as discussed above. It should be
457 noted that there are multiple instances where ICANN org processes **public data**, for
458 example, through Bulk Registration Data Access (BRDA) submissions, or through the
459 Centralized Zone File Data System/Service (CZDS). We can answer additional questions
460 on ICANN org’s processing of **public data** if the Team is interested in further
461 information on these.
462

463 We also note that a set of previously undertaken data processing activities associated
464 with the Whois Accuracy Reporting System (Whois ARS), and using **publicly available**
465 **registration data**, have not been continued by ICANN org following adoption of the
466 Temporary Specification in May 2019. We note that the EPDP Team’s Phase 1 report
467 indicated that “the topic of accuracy as related to GDPR compliance is expected to be
468 considered further as well as the WHOIS Accuracy Reporting System.” With regard to
469 any proposed processing activities for ICANN org around data accuracy based on the
470 Team’s Phase 2 recommendations, we believe this requires a deeper discussion
471 including such factors as data subjects’ rights, intended purposes for data processing
472 under applicable law, feasibility, and value added for such purposes.”
473

474 **Preliminary Conclusion – OCTO Purpose**

475 Having considered this input, most members of the EPDP Team agreed that at this
476 stage, there is no need to propose an additional purpose(s) to facilitate ICANN’s Office
477 of the Chief Technology Officer (OCTO) in carrying out its mission. Most also agreed
478 that the EPDP Team’s decision to refrain from proposing an additional purpose(s)
479 would not prevent ICANN org and/or the community from identifying additional
480 purposes to support unidentified future activities that may require access to non-public
481 registration data.

482 3.6 Feasibility of unique contacts to have a uniform anonymized 483 email address

484
485 The [Annex: Important Issues for Further Community Action](#) “set[s] forth
486 implementation issues raised during the course of development of this Temporary
487 Specification for which the ICANN Board encourages the community to continue
488 discussing so that they may be resolved as quickly as possible after the effective date of
489 the Temporary Specification.” The EPDP Team, as part of its Phase 2 deliberations, was
490 chartered to review issues within the [Annex](#), including,

491
492 “2. Addressing the feasibility of requiring unique contacts to have a uniform
493 anonymized email address across domain name registrations at a given
494 Registrar, while ensuring security/stability and meeting the requirements of
495 Section 2.5.1 of Appendix A.”

496
497 In reviewing this topic, the Legal Committee posed the following question to its outside
498 counsel, Bird & Bird:

499
500 *The group has discussed the option of replacing the email address provided by*
501 *the data subject with an alternate email address that would in and of itself not*
502 *identify the data subject (Example: 'sfjgsdfsafgkas@pseudo.nym'). With this*
503 *approach, two options emerged in the discussion, where*
504 *(a) the same unique string would be used for multiple registrations by the data*
505 *subject ('pseudonymisation'), or*
506 *(b) the string would be unique for each registration ('anonymization').*

507
508 *Under option (a), the identity of the data subject might - but need not*
509 *necessarily - become identifiable by cross-referencing the content of all domain*
510 *name registrations the string is used for.*

511
512 *From these options, the following question arose: Under options (a) and/or (b),*
513 *would the alternate address have to be considered as personal data of the data*
514 *subject under the GDPR and what would be the legal consequences and risks of*
515 *this determination with regard to the proposed publication of this string in the*
516 *publicly accessible part of the registration data service (RDS)?*

517
518 In its summary response, Bird & Bird noted the following:

519
520 “[Options (a) and (b) described above] would still be treated as the publication
521 of personal data on the web. This would seem to be a case covered by a
522 statement made in the Article 29 Working Party's 2014 Opinion on
523 Anonymization techniques [ec.europa.eu]: "when a data controller does not
524 delete the original (identifiable) data at event-level, and the data controller

525 hands over part of this dataset (for example after removal or masking of
526 identifiable data), the resulting dataset is still personal data." The purpose for
527 making this e-mail address available, even though it's masked, is presumably to
528 allow third parties to directly contact the data subject (e.g. to serve them with
529 court summons, demand takedowns, etc.) – so it's quite clearly linked to that
530 particular data subject, at least so far as ICANN/Contracted Parties are
531 concerned. However, either option would be seen as a valuable privacy-
532 enhancing technology (OPET) / privacy by design measure."

533

534 Following the receipt of the above advice, the EPDP Legal Committee briefed the EPDP
535 Team and noted the risks identified in Bird & Bird's response. While the masking of
536 personal email addresses is a "valuable privacy-enhancing technology," the publication
537 of masked email addresses is still considered publication of personal data. Accordingly,
538 the EPDP Team is providing the following response to the question regarding
539 addressing the feasibility of requiring unique contacts to have a uniform masked email
540 address across domain name registrations at a given Registrar, while ensuring
541 security/stability and meeting the requirements of Section 2.5.1 of Appendix A:

542

543 **Preliminary Recommendation #22.**

544 The EPDP Team received [legal guidance](#) noting that the publication of uniform masked
545 email addresses results in the publication of personal data; therefore, wide publication
546 of masked email addresses is not currently feasible under the GDPR as disclosure
547 would, in certain instances, require meaningful human review, i.e., balancing test
548 under GDPR Article 6(1)(f).

549 **3.7 Accuracy and WHOIS Accuracy Reporting System**

550

551 From the EPDP Team Phase 1 Final Report: EPDP Team Recommendation #4

552

553 *The EPDP Team recommends that requirements related to the accuracy of registration*
554 *data under the current ICANN contracts and consensus policies shall not be affected by*
555 *this policy.**

556

557 ** Footnote: The topic of accuracy as related to GDPR compliance is expected to be*
558 *considered further as well as the WHOIS Accuracy Reporting System.*

559

560 The EPDP Team also took note of the legal guidance provided during phase 1 (see
561 [here](#)).

562

563 As there was lack of clarity in relation to the expectation of the GNSO Council in
564 relation to this topic, noting that in parallel an exchange of letters had taken place
565 between the GNSO Council and ICANN org (see
566 <https://www.icann.org/en/system/files/correspondence/marby-to-drazek-05dec19->

567 [en.pdf](#), amongst others), the Chair of the EPDP Team [requested](#) the GNSO Council for
568 further guidance.

569

570 The GNSO Council provided its [response](#) on 17 March 2020, noting that:

571

572 *“There is broad recognition that the topic of RDS data accuracy is both*
573 *important and complex, and most believe it will require more time than is*
574 *currently available to the EPDP for its Phase 2 work on developing policy to*
575 *support the Standardized System for Access and Disclosure (SSAD). Further,*
576 *while the Priority 2 issues are included in the Phase 2 work plan, they are not*
577 *part of the critical path to delivery of the Phase 2 Final Report on the SSAD.”*

578

579 As a result, the Council outlined an alternative path for how it will address the topic of
580 accuracy. The Council did request the EPDP Team to “to submit the pending legal
581 [questions] to help inform the work of any future scoping team”.

582

583 **Preliminary Conclusion – Accuracy and Whois Accuracy Reporting System**

584 Per the instructions from the GNSO Council, the EPDP Team will not consider this topic
585 further; instead, the GNSO Council is expected to form a scoping team to further
586 explore the issues in relation to accuracy and ARS to help inform a decision on
587 appropriate next steps to address potential issues identified.

588

589 **3.8 Purpose 2** *[To be updated following 24/3 meeting]*

590

591 In its Phase 1 Final Report, the EPDP Team recommended the following ICANN Purpose
592 for processing gTLD Registration Data: “Contributing to the maintenance of the
593 security, stability, and resiliency of the Domain Name System in accordance with
594 ICANN’s mission through enabling responses to lawful data disclosure requests”.

595

596 As part of its consideration of the EPDP Phase 1 recommendations, the ICANN Board
597 did not adopt this purpose, also referred to as “Purpose 2,” noting:

598

599 *“The Board does not adopt this Recommendation at this time in light of the*
600 *EPDP Team’s characterization of this as a placeholder and the need to consider*
601 *recent input from the European Commission. Based on the views presented in*
602 *the recent letters from the European Commission, Purpose 2, as stated in the*
603 *EPDP Team’s Final Report, may require further refinement to ensure that it is*
604 *consistent with and facilitates ICANN’s ability to deliver a predictable and*
605 *consistent user experience compliant with applicable law. The Board’s concern is*
606 *that if the wording of purpose 2 is deemed inconsistent with applicable law, the*
607 *impact might be elimination of an ICANN purpose. There are clear ICANN*
608 *purposes that ICANN should be able to employ under existing legal frameworks*
609 *to deploy a unified method to enable those with a legitimate and proportionate*

610 *interest to access non-public gTLD registration data, although such purposes*
611 *may need to be restated or further refined based on additional legal, regulatory*
612 *or other input. The Board directs ICANN org to continue to evaluate this*
613 *proposed purpose and to request additional guidance from the DPAs, regarding*
614 *the legitimate and proportionate access to registrant data and ICANN's SSR*
615 *mission”.*

616

617 Following the EPDP Team's publication of its Final Report, the European Commission
618 provided the following guidance via [its letter](#):

619

620 *“in order to develop a solution for access to non-public gTLD registration data*
621 *that is compliant with GDPR, a clear distinction should be maintained between*
622 *the different processing activities that take place and the respective purposes*
623 *pursued by the stakeholders involved, (...) Accordingly, we consider that a clear*
624 *distinction needs to be made between ICANN's own purposes for processing*
625 *personal data and the purposes pursued by the third parties in accessing the*
626 *data. For this reason, we would recommend revising the formulation of purpose*
627 *two by excluding the second part of the purpose "through enabling responses to*
628 *lawful data disclosure requests" and maintaining a broader purpose to*
629 *"contribute to the maintenance of the security, stability, and resiliency of the*
630 *Domain Name System in accordance with ICANN's mission", which is at the core*
631 *of the role of ICANN as the “guardian” of the Domain Name System.”*

632

633 In its recent [resolution](#) concerning the non-adoption of purpose 2, the GNSO Council
634 noted the following:

635

636 *“The GNSO Council has concluded that concerning Recommendation 1, Purpose*
637 *2, this is firmly within the scope of the EPDP Team to address as part of its phase*
638 *2 deliberations as the original language was already flagged as a placeholder*
639 *pending further consideration during phase 2.”*

640

641 The EPDP Team deliberated extensively on this topic and requested the ICANN's Board
642 input; several EPDP Team members observed further guidance regarding ICANN org's
643 thoughts on Purpose 2 would be informative for the EPDP Team's Phase 2 discussion.

644

645 The ICANN Board provided its response on 11 March 2020, stating:

646

647 *“The ICANN Board of Directors liaisons to the Phase 2 team intend to express*
648 *support for a purpose statement that was proposed by the European*
649 *Commission in its comments to ICANN org on the Phase 1 Final Report”.*

650

651 [Placeholder for Board/ICANN org clarifying statement on its support for this purpose]

652

653

654 As a result, the EPDP Team* recommends the following:

655

656 **Preliminary Recommendation #23.**

657 The EPDP Team recommends the following purpose be added to the Phase 1 purposes,
658 which form the basis of the new ICANN policy:

- 659 • Contribute to the maintenance of the security, stability, and resiliency of the
660 Domain Name System in accordance with ICANN's mission.

661

662 *Note that NCSG expressed its disagreement with this preliminary recommendation,
663 noting that “the stated purpose is too vague. There are well-known disagreements
664 within the community on what the scope of SSR might be. How are we recommending
665 this as a purpose without agreeing on its scope? Furthermore, how would this purpose
666 be explained to registrants in the Registration Agreement?”.

667

668

669

670

671

4 Next Steps

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4.1 Next Steps

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The EPDP Team will review and analyze the comments received on this addendum in the next phase of its work and integrate its priority 2 recommendations in the Final Report to be sent to the GNSO Council for review. If adopted by the GNSO Council, the Final Report would then be forwarded to the ICANN Board of Directors for its consideration and, potentially, approval as an ICANN Consensus Policy.