Possible approach to consensus in deliberation of possible requirements for RDS PDP WG

Background

This is a revised version of the one presented in the WG call on 14 June. Edits were made and comments inserted in an effort to reflect the WG discussion that occurred in the meeting and since then; they are redlined to make it easy to see them. A suggestion was made in the 14 June WG meeting to cover ~~the 'big~~ three' charter question areas (purpose, privacy, data elements) first and getting public feedback on those areas before considering the areas of accuracy and gated access; I then said that that could result in three Initial Reports for Phase 1.

A list of pros and cons of this approach versus the current work plan was created and distributed to the WG list on 20 June. It seems pretty clear that there are good arguments on both sides and there does not appear to be consensus either way, so the leadership team proposes the approach below that hopefully addresses concerns on both sides.

Proposed Approach

1. With reference to Charter Section IV, Rules of Engagement, the leadership team recommends the following regarding determining consensus on possible requirements:
   a. Modify the WG Work Plan to allow for producing two Initial Reports for Phase 1, each followed by public comments:
      i. After initial deliberation on the first five charter questions (Work Plan steps 12.a, 12.b, 12.c), the General Requirements (Work Plan step 12.d) and the Fundamental Question (Work Plan step 12.e – "Is a new next-gen RDS needed or can the existing WHOIS system be modified to satisfy requirements for questions 1-5?")
         - Note that this would entail adding the following sub-steps to Work Plan task 12: First Initial Report for Phase 1, Review & analyze input received on First Initial Report.
      ii. At the end of Phase 1 (Work Plan steps 13-16)
         - Note that Work Plan step 17 would be changed to "Second Initial Report for Phase 1".
   b. If the WG decides that input from the SOs, ACs, SGs & Cs is needed after deliberating on the possible requirements regarding purpose, privacy and data elements and before deliberating on the possible requirements about gated access and accuracy (or at any point during phase 1), additional Outreach step(s) may be added to the Work Plan.
   c. Forego formally determining consensus on individual possible requirements according to the charter until after public comment is received and analyzed on the first Initial Report.
      i. In the interim we should try to reach rough consensus on possible requirements and communicate that in the first Initial Report.
      ii. In cases where that is not possible, describe the level of agreement and/or disagreement in the first Initial Report sufficiently enough to allow for public input to help guide the consensus process.

Comment [GSS1]: This seems to push the main question about approach down the road and implies a new step between 12.b and 12.c, where we will return to the debate we are having now, but without the benefit of spending any time on gated access and accuracy. Am I reading this correctly?

- For example: 'supported by all', 'supported by most', 'supported by many but also objected to by many' but make clear that a formal consensus call will only take place after the review of comments on the first Initial Report.
  d. Analyze and respond to public comments using the public comment tool.
  e. Taking into consideration the public comment input, formally determine consensus on the possible requirements for the applicable questions using the procedures contained in Charter Section IV.
2. Take the following steps to organize the possible requirements list for all eleven charter questions:
   a. Triage list of possible requirements to ensure they are in the correct phase and organize the list accordingly so that applicable possible requirements that should be considered in phase 1 can be more easily considered by the WG, and all others remain as placeholders for consideration during phases 2&3
      i. This is in response to Greg Aaron's comments.
      ii. Lisa Phifer and Susan Kawaguchi will take a first crack at this for review and approval by the WG. (Note that there was support and no objections to this triage on the WG call on 14 June.)
   b. Identify similarities and interdependencies of possible requirements, facilitating deliberation on similar requirements and consideration of any prerequisite possible requirements before dependent ones.
      i. In addition to the task described in 2.a.ii, Lisa Phifer and Susan Kawaguchi will take a first cut at grouping similar/related possible requirements and organizing them for review and approval by the WG. (Note that there was support and no objections to this grouping on the WG call on 14 June.)
      ii. After possible requirements are arranged into similar/related groups, the WG should identify dependencies and consider them accordingly.
3. Decide where to start deliberation (Note that discussion on this was initiated in the 14 June WG call and WG members were asked to continue the discussion on the list before the call on 22 June; efforts will be made to agree on an approach in the 21 June meeting.)
   a. The Work Plan is designed to start with the questions related to three areas: users/purposes, privacy & data elements questions. See Work Plan step 12.a (deliberating on possible requirements for questions about users/purposes, data elements & privacy).
   b. To begin Work Plan step 12.a, Chuck in his capacity as chair proposes the following three steps:
      i. Using the list of possible requirements developed by the WG, identify a subset that would apply to the RDS in all circumstances (see examples below).
         - To accomplish this, WG members would be asked to:
            1) Individually propose any such possible requirements for WG consideration related to one or all of the three areas (users/purposes, privacy, data elements)

2) Collectively debate and refine all such possible requirements and try to reach rough consensus as described in 1.c above.
- Here are some possible requirements proposed by Chuck for illustrating the approach:
  - "The RDS must collect, validate, store and display the domain name and registrar name for all second level gTLD domain names." (A possible source for this requirement would be **[DE-D07-R02]** – From Spec 4, Section 1.6: "Registrar Data [must include] Registrar Name.")
  - ~~"The RDS must be in compliance with applicable international law."(This possible requirement is already suggested by many items in the list of proposed requirements but is not specifically listed this way. However, it could possibly be derived from the gTLD registry and registrar agreements because contracted parties are expected to follow applicable laws.)~~
- If these two example possible requirements were proposed to the WG as ones that would apply to the RDS in all circumstances (i.e., no exceptions or specific conditions apply), the WG would then discuss them and modify their wording as needed for the purpose of determining whether there is at least rough consensus that they would apply to the RDS in all circumstances.
- Here is a counter example, i.e., possible requirements that may not apply in all circumstances:
  - "[DE - D30 - R09] – The Data Retention Limitation principle (Article 6(1)e of the Directive) is a fundamental principle in EU data protection law imposing that personal data must only be kept as long as necessary to achieve the purpose for which the data have been collected or for which they are further processed. pg17" Note that this possible requirement would likely only apply when the applicable jurisdiction is the EU or in other jurisdictions that have similar directives.

ii. Review and refine the triaged and grouped possible requirements list prepared in step 2 above including confirming dependencies and/or priorities as applicable.

iii. Deliberate on the remaining possible requirements for which there was not rough consensus that they apply in all circumstances using the triaged/grouped list of possible requirements from the preceding step ii.

Comment [GSS2]: We should not use this as an example. This seems to misuse the term "international law," which traditionally means the law of nations, i.e., laws that apply to the conduct of nations, disputes between nations, and treaties and conventions. At best this needs to be clarified. Further, it is not even a specifically listed possible requirement. We should use a clearly stated actual possible requirement as an example.

Comment [GSS3]: What does this mean? Is "gated access" an exception or specific condition? It seems wrong to demote one of our essential elements to an "exception or specific condition." On the other hand, it's entirely unclear how we will deal with the relationship between gated access and the other areas if we take an approach that puts gated access to one side.