

Comment of John Poole, DomainMondo.com, to the ICANN Board of Directors on the EPDP Phase 1 Final Report

After **two decades of failure at ICANN** to reform WHOIS, after **decades of ICANN failing** to respect the privacy rights of millions of domain name registrants and **ignoring EU privacy directives**, after **decades of ICANN irresponsibly** exposing millions of domain name registrants to the worst types of **global cybercrime** including, but not limited to, spammers, scammers, malware, phishing, hacking, and domain name theft, by exposing registrants' personal data, including addresses, phone numbers, and email addresses, in a "wide open database," and **finally, the coup de grâce**, after **wasting most of the 2 years** following [publication of GDPR](#) in May 2016, the **ICANN Board of Directors, ICANN Org, and the GNSO, all failed to properly prepare** for the GDPR effective date of May 25, 2018, with ICANN Org's management team engaging in a comical public spectacle of "magical thinking" in 2018 that ICANN would be granted a "moratorium," and then publishing a rushed and poorly-written "Temp Spec," followed by this rushed, poorly planned and led, dysfunctional "EPDP Phase 1," which included a poorly planned and executed public comment period using an "experimental" Google Form format which constricted the ability of the public to submit comments on the EPDP team's "initial draft" characterized by the GNSO CPH (registrars and registry operators) in these terms: "The initial report does not present for review any concrete policy. Instead it is a discordant document filled with tentative suggestions and polarised arguments"--
<https://mm.icann.org/pipermail/gnso-epdp-team/2018-November/000994.html>, we have now somehow arrived at a point where, in the words of the comment already submitted by the [Internet Governance Project \(IGP\)](#):

"... **it is pointless to make comments** that oppose or call for further exploration of particular recommendations or issues in the final report. Exploring the issues and legalities, and reaching the compromises needed to maximize support for specific reforms, was the task of the EPDP itself. The process of replacing the Temporary Specification is completed; no one is in a position to second-guess these difficult choices and hard-won compromises at this juncture. We are quite certain that any change to the proposed policies, in any direction, would result in less support than it has now."

Nonetheless, I submit the following points for present and future consideration, as I attended almost all EPDP Phase 1 meetings as an observer:

My comment to the initial draft was never actually read by members of the EPDP team, but transposed by ICANN "support staff" onto a vast spreadsheet for EPDP members to read, if interested, but you can read my comment [here](#) and as [submitted](#) (pdf).

The EPDP team lacked a methodology and legal guidance for developing the “purposes,” and this failure was duly noted “on the record” by EPDP member Stephanie Perrin, but ignored by the EPDP Phase 1 leadership.

Early in the sequence of EPDP meetings, James Bladel, EPDP member representing the Registrars Stakeholder Group, and employed by GoDaddy, the world’s largest domain name registrar, stated (more than once) on the record including Aug 7, 2018 (transcript): “We’re talking about collection of data for the purposes of publication in an RDS system or an online directory and that is, again, not something that we [registrars] need in order to serve our customer, our registrant customers ... we have our own internal communications with those customers.” No one from the CPH ever contradicted or disputed that statement, and it was for that reason that I submitted the following as a “primary purpose”--

As subject to Registry and Registrar terms, conditions, and policies, and ICANN Consensus Policies: To Record And Maintain Records Of The Names And Contact Information of Domain Name Registrants.

If you don’t have that as a purpose, then Mr. Bladel’s admission on the public record that registrars collect personal data for the WHOIS that registrars “don’t need or use,” may be hard to defend when confronted by a GDPR complaint or DPA inquiry, but I am content to leave it to the expensive legal teams hired by contracted parties, and ICANN, in response to the first GDPR inquiry or GDPR class action filed, to figure out. This may be particularly relevant since the EPDP Phase 1 failed to adequately address the question of “who are the controllers and processors?”

For whatever it is worth, from my perspective as a registrant primarily of .COM domain names (.COM domain names comprise the vast majority of ALL gTLD domain names), which are still covered by the “Thin WHOIS” model, ICANN is the controller, the registrars are the processors, and the registry Verisign is neither, when it comes to the WHOIS personal data. In my opinion, this is also the model that should prevail after Phase 2 is completed, but I do not think ICANN should be the “sole gateway” for disclosure of WHOIS personal data to third parties, but instead disclosure should continue to be through registrars, who hold other personal data on registrants which may be needed by law enforcement in an emergency and could save lives.

The EPDP team made improvements in minimization of the WHOIS data collected, but did not go far enough as I argued repeatedly in my submitted comment to the “initial draft.” However the Google Form used for public comment did not allow for utilizing a graphic which illustrates this, and why the **Organization** and **Technical Contact** fields should be ELIMINATED entirely as unnecessary, redundant, and confusing. The example I use is **Facebook.com** WHOIS data presently shown here: <https://www.whois.com/whois/facebook.com>

The registrant of Facebook.com is not "Domain Admin" but Facebook, Inc., therefore the following graphic illustrates the rationale for my comments to the initial draft:

WHOIS New Way: facebook.com

Registrant Name and Contact Information:

| | |
|--------------|----------------|
| Name: | Facebook, Inc. |
| Street: | 1601 Willow Rd |
| City: | Menlo Park |
| State: | CA |
| Postal Code: | 94025 |
| Country: | US |
| Phone: | +1.6505434800 |
| Email: | domain@fb.com |

WHOIS Old Way: facebook.com

| Registrant Contact | | Administrative Contact | | Technical Contact | |
|--------------------|----------------|------------------------|----------------|-------------------|----------------|
| Name: | Domain Admin | Name: | Domain Admin | Name: | Domain Admin |
| Organization: | Facebook, Inc. | Organization: | Facebook, Inc. | Organization: | Facebook, Inc. |
| Street: | 1601 Willow Rd | Street: | 1601 Willow Rd | Street: | 1601 Willow Rd |
| City: | Menlo Park | City: | Menlo Park | City: | Menlo Park |
| State: | CA | State: | CA | State: | CA |
| Postal Code: | 94025 | Postal Code: | 94025 | Postal Code: | 94025 |
| Country: | US | Country: | US | Country: | US |
| Phone: | +1.6505434800 | Phone: | +1.6505434800 | Phone: | +1.6505434800 |
| Fax: | +1.6505434800 | Fax: | +1.6505434800 | Fax: | +1.6505434800 |
| Email: | domain@fb.com | Email: | domain@fb.com | Email: | domain@fb.com |

My final point was raised in my comment to the initial draft but never considered nor addressed in the Phase 1 Final Report:

What other factors should the EPDP team consider about whether Contracted Parties should be permitted or required to differentiate between natural and legal persons?

ICANN has NEVER limited registration of domain names to just "natural persons" or "legal persons" a/k/a "legal entities." See **2013 RAA 3.7.7.1** "... Registered Name Holder that is an organization, association, or corporation ..." **Many unincorporated organizations and associations** are not "legal persons" a/k/a "legal entities" -- see

<https://content.next.westlaw.com/Document/I25017386e8db11e398db8b09b4f043e0/View/F>

[ullText.html](#) In addition, many businesses are licensed or registered by state authorities as simply a DBA — also known as a trade name, fictitious name, or assumed name—see <https://www.sba.gov/business-guide/launch-your-business/choose-your-business-name>.

Respectfully submitted,

John Poole, gTLD domain names registrant, and *editor*, DomainMondo.com

April 17, 2019