**EPDP PHASE 2A – FINAL REPORT INPUT FORM**

Instructions: EPDP Team members are to review the redline section 3 of the Final Report (dated 26 August) and respond to the 4 specific asks that have been identified in the report to resolve outstanding issues. Also, if there are any other redline items that have resulted in “cannot live with” items, please flag this in the top table as well.

Please use the second table for flagging any further minor / non-substantive / not rising to the level of ‘cannot live with’ edits.

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| **Ask #** | **Group** | **Response / reaction to the ask** | **Possible changes to consider that would find a compromise that addresses the different positions** |
| **Ask #1: EPDP Team to consider if this section (lines 100-104), as well as footnote 5, 20 and 21, can be removed if the Chair statement on consensus designations makes clear that there was significant disagreement within the group on a number of these issues and that readers are encouraged to review the minority statements to better understand the different views and perspectives.***Leadership assessment: There appears to be general support for removing the current statement and related footnotes expressing opinions but only if the Chair statement accurately reflects the EPDP Team’s conversations and differences of opinions to make clear that readers understand that where the recommendations have ended up, is not necessarily what some would have liked to see. Keith to circulate consensus designations and proposed Chair’s statement following the call to allow the EPDP Team to confirm that this has been done in an acceptable manner.*  |
| Ask 1 | RrSG | The RrSG supports removing the section as well as footnote in favour of the Chair statement and minority statements. |  |
| Ask 1 | GAC, IPC | The GAC would prefer to include explicit statements about the lack of consensus on key recommendations in the body of the Final Report.  | Such statements should be brief but should convey the gist of the basis for disagreement.  |
| Ask 1 | ALAC | The ALAC would FAR prefer that the final report accurately and fully support the deliberations, particularly in a case such as this where there is clearly not a strong consensus on the details. However, the ALAC can accept this subject to:1. That the definition of the fields (see Ask 2) is sufficiently detailed as to support the ALAC minimalist position.
2. The exact wording of the Chair’s statement on the disagrement(s)
 | The ALAC supports the GAC proposal to address this issue as the FAR better solution. |
| Ask 1 | RySG | We can support the ask 1 suggestion to remove the section and related footnotes and for the chair designation to note the significant disagreements and encourage reading of minority statements. |  |
| **Ask#2: Do the updates and the reorganization of recommendation #1 address the cannot live with items flagged? If not, how can these be addressed, factoring in the discussions to date.** *Leadership Assessment: There is still a level of discomfort with the recommendation, although based on the discussions to date the group does seem to agree on the underlying principle (a field(s) must be created (technically), but this field(s) is optional for use by CPs. If this is indeed the common understanding, and factoring in the other suggestions, would the following updates be helpful:*The EPDP Team recommends that a field or fields MUST be created**[[1]](#footnote-1)** to ~~allow for~~ **facilitate** differentiation between legal and natural person registration data and/or if that registration data contains personal or non-personal data. The EPDP expects that the technical community, for example the RDAP WG, will develop any necessary standards associated with such fields.This field or fields MAY[[2]](#footnote-2) be used by those Contracted Parties that differentiate between legal and natural person registration data and/or if that registration data contains personal or non-personal information. For clarity, Contracted Parties MAY make use of the field(s), which means that if a Contracted Party decides not to make use of the field(s), it may be left blank or may not be present. Additionally, **Contracted Parties MAY include** the field(s) ~~is not required to be included~~ in a RDDS response. |
| Ask 2 | RrSG | The RrSG would prefer "enable" or "facilitate" instead of "allow for", but overall can live with the changes. |  |
| Ask 2 | IPC | Edit for clarity/accurately capturing intent. Other IPC positions on Ask 2 align with those expressed by other groups as indicated above.  | Should be uncontroversial to update “and/or” on line 109 to “and” |
| Ask 2 and lines 100--104lines 288-95 | GAC | The current formulation lacks specificity about how this data element/flagging would work within the existing and/or currently recommended mechanisms, most notably where the flagging field should be created. The current formulation still does not accurately reflect the GAC and other SG’s position which was flagged previously below.The references in lines 288-95 need to reflect the final outcome of deliberations. | The data element/flagging should create a consistent infrastructure across applicable data controllers that will work within the currently recommended mechanisms.Change to: ". . . obligatory even for those contracted parties who decide not to differentiate. . ."Our position is that for new registrations and renewals, the CP's should require completion of these fields to the greatest extent possible and that further discussions should take place on how to update these fields for prior registrations. |
| Ask 2 | ALAC, IPC | The ALAC cannot accept the currently proposed formulation. There are two specific issues:1. The definition does not say in any way WHERE the fields are to be created. Perhaps it would be in the bottom of a locked filing cabinet in a disused lavatory with a sign on the door saying “Beware of the Leopard”. Or at the Registrar’s Office in Alpha Centauri. (For those who do not recognize the references, see <https://en.wikipedia.org/wiki/The_Hitchhiker%27s_Guide_to_the_Galaxy>.)

Similar Phase 1 recommendations talked about escrow and WHOIS and redaction and made it clear what fields we were talking about. This only mentions publishing in RDDs in footnote 7 that is not sufficient.1. The statement “Additionally, the field(s) is not required to be included in a RDDS response." is worded negatively and is not sufficient.
 | 1. Make reference to the Ry Agreement Spec 4 and the RAA RDDS Specification and the Registry Registration Data Directory Services Consistent Labelling and Display Policy (in the text, not a footnote).
2. Replace it with the more standard “The field(s) MAY be included in an RDDS response.”

Note that these changes do NOT fully address the ALAC target which is that if any differentiation/determination is done by the Registrar, it MUST be reflected in these fields. Moreover, for new registrations, such differentiation/determination MUST be made. This is comparable to the GAC position. |
| Ask 2 | RySG | The proposed edits mostly address the concerns raised during the can’t live with review, however the use of the word “allow” (line 108) doesn’t work. The creation of a standard data element doesn’t “allow” anything. | Change “allow” on (line 108) to “capture the results of” which is in line with the above section (line 97).Alternative option would be to replace “allow for” with “facilitate”. |
| **ask #3: Considering the org input (“because this recommendation is for guidance only (and thus not subject to compliance enforcement), the use of should vs may wouldn’t be expected to have a significant impact from the org perspective"), can the group live with leaving this as “SHOULD” (lines 261-265). If not, please provide alternative suggestions that take into account the EPDP Team’s discussion.***Leadership assessment: All groups, apart from the RySG, seems to be able to live with the word “SHOULD”. Is the RySG willing to accept that outcome, or would it like to stick with its “cannot live with” position which will be factored into the consensus designation process.*  |
| Ask 3 | RrSG | The RrSG supports using "SHOULD" |  |
| Ask 3 | GAC, IPC | The GAC can live with “SHOULD” and opposes other formulations.  |  |
| Ask 3 | ALAC | The ALAC can live with leaving this as “SHOULD”. |  |
| Ask 3 | RySG | The use of “MAY” here more accurately captures the working group’s intent and agreement to create optional guidance for contracted parties to use if they choose to differentiate between legal and natural persons. | Change “SHOULD” to “MAY” |
| **ask #4: please consider the updates proposed by the RrSG (lines 322-329 - “any future work within ICANN by the ….”) & RySG team (“any future work by ICANN by the relevant controllers and processors in relation…”. Also, please provide further input on what these changes would mean or imply as work on a Code of Conduct was not part of phase 1 or phase 2 recommendations. Also consider additional language suggested by IPC (late submission): “For the avoidance of doubt, RDS data requestors are relevant controllers and processors and must be included in any such future work.”***Leadership assessment: based on the input provided, and additional review of the GDPR requirements in relation to the development of a Code of Conduct, would the following updates address the different positions:*The EPDP Team recommends, in line with GDPR Article 40 requirements for Codes of Conduct,[[3]](#footnote-3) that the above developed guidance concerning legal/natural differentiation should be considered by any **possible** future work **within ICANN** by the relevant controllers and processors in relation to the development of a GDPR code of conduct. **Consistent with GDPR recital 99, “When drawing up a code of conduct, or when amending or extending such a code, associations and other bodies representing categories of controllers or processors should consult relevant stakeholders, including data subjects where feasible, and have regard to submissions received and views expressed in response to such consultations”.**~~This future work is expected to be carried out in an open and transparent manner, allowing for observers to follow the discussions and with the opportunity for the community to provide input before the Code of Conduct is finalized.~~ |
| Ask 4 | GAC | GAC supports the RGR and IPC formulations. |   |
| Ask 4 | ALAC | Those represented by the eventual CoC MUST be fairly represented on the groups formulating the CoC. |  |
| Ask 4 | RrSG | The RrSG supports either the change proposed by the RrSG or the change proposed by the RySG, but not the late submission change proposed by the IPC. |  |
| Ask 4 | RySG | Registries support either the RySG or the RrSG proposed edits but NOT the IPC proposal. |  |
| Ask 4 | IPC | Agree with ALAC above - CoC development must explicitly include requestors. The sentence after this one implicitly excludes requestors, and is unacceptable for that reason.  | The EPDP Team recommends, in line with GDPR Article 40 requirements for Codes of Conduct27, that the above developed guidance concerning legal/natural differentiation should be considered by any future work by the relevant controllers and processors, including requestors, in relation to the development of a GDPR code of conduct. |

**Minor Edits**

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| **Line numbers & topic** | **Group** | **Rationale**  | **Proposed Changes** |
| Footnote 6 | Staff Support Team | Leftover from Initial Report | Delete |
| Footnote 7 (bottom of page 4) | RySG | The new footnote 7 on CL&D makes no sense in this context. There is nothing in CL&D that would apply to this new field. It is unclear what this means and how it would be expected to be implemented. | Delete the newly added footnote 7 on page 4. |
| Footnotes re: divergence. | GAC | We note that this issue is still being discussed and fns about disagreement may need further edits/deletions depending upon the outcome of Tuesday’s discussions. | TBD |
| lines 554-55, 560, 561 | GAC | Clarify that this Recommendations refers to the publication of pseudonymized information. | Add “pseudonymized” to modify email address. “The EPDP Team recommends that Contracted Parties who choose to publish a ‘pseudonymized’ registrant-based or registration-based email address in the publicly accessible RDDS. . .” “In assessing the risks, benefits, and safeguards associated with publishing a ‘pseudonymized’ registrantbased or registration-based email address in the publicly accessible RDDS. . .” |
| line 580 | GAC |  | Add a period after “spammers” to end the sentence.  |

1. **“Created” in this context means that ICANN org, with the assistance of the the technical community will develop a standard that defines how and where this field or fields can be used within EPP and the RDAP protocol.** [↑](#footnote-ref-1)
2. #  If a Contracted Party chooses to differentiate between legal and natural registration data or personal and non-personal data AND chooses to publish this field or fields in RDDS, those field(s) will be appended to the requirements of an RDDS response format as currently defined in the RDDS Specifications for Ry & Rr (see <https://www.icann.org/resources/pages/registry-agreement-raa-rdds-2015-04-27-en>) and WHOIS Advisory (https://www.icann.org/resources/pages/registry-agreement-raa-rdds-2015-04-27-en). ~~the existing~~ [~~Registry Registration Data Directory Services Consistent Labelling and Display Policy~~](https://www.icann.org/resources/pages/rdds-labeling-policy-2017-02-01-en) ~~is expected to apply~~.

 [↑](#footnote-ref-2)
3. Not to be confused with the Code of Conduct that is referenced in the RAA and/or Registry Agreements. [↑](#footnote-ref-3)