

Kurt Pritz
Rafik Dammak
Co-Chairs, EPDP on the Temporary Specification for gTLD Registration Data

December 21, 2019

Re: Contracted Parties House Comment on the Initial Report of the Temporary Specification for gTLD Registration Data EPDP

Dear Kurt and Rafik,

The Contracted Parties House (“CPH”), comprised of the Registrar Stakeholder Group and the Registries Stakeholder Group, submits this joint comment on the Initial Report of the Temporary Specification for gTLD Registration Data EPDP (“Initial Report”) to address several overarching issues. The EPDP Team’s successful and timely completion of its work is of great importance to the CPH. CPH representatives have participated in the EPDP in good faith; invested significant time, expertise and energy into the EPDP Team’s work; and have repeatedly made efforts to find compromise positions – despite the fact that contracted parties are, among the EPDP Team, most at risk under GDPR.

First, the CPH has concerns about the numerous discussions that have taken place during EPDP Team meetings that implied that the EPDP Team has the authority to propose significant alterations to the current domain name registration process. Some of those discussions veered into implying that contracted parties should provide different registration procedures for different types of registrants.¹ This is incorrect and such suggestions are inappropriate, as they are outside the EPDP’s scope. The EPDP’s charter clearly states, “The EPDP Team is being chartered to determine if the Temporary Specification for gTLD Registration Data should become an ICANN Consensus Policy, as is or with modifications, while complying with the GDPR and other relevant privacy and data protection law.” The charter, including the questions for consideration, is silent on significantly altering the domain name registration process, as is the Temporary Specification. The EPDP Team *must* limit its focus to the charter if it is to complete its work by the anticipated February 1, 2019 Final Report publication date.

Several working methods have impeded the EPDP Team’s progress. Certain EPDP Team members spent a disproportionate amount of time (including during almost every meeting) discussing -- or trying to discuss -- access. These access discussions and efforts were premature, diverted the EPDP Team’s attention from its critical prerequisite work, and negatively impacted the Team’s progress. The Initial Report reflects this diversion and lack of progress. The EPDP Team has a responsibility to the ICANN community to be diligent about remaining “in scope;” otherwise, the Team risks not completing its work by February 1, 2019.

The EPDP Team has neither agreed upon – nor in many cases even conducted – significant foundational work including defining a minimum data set, performing a data audit, and defining roles and responsibilities of parties. Further, the Purposes put forth as Recommendations in the Initial Report, only stand on the analysis conducted in the workbooks which are overtly framed

¹ For example, during a legal v. natural person discussion in Barcelona, some EPDP Team members proposed adding a “checkbox” for the registered name holder to designate person status or creating separate registration processes for legal and natural persons.

as ICANN Purposes only.² This is a concern as we look to how this approach lends itself to a resultant Consensus Policy, and it is unclear how they may be applied to Contracted Parties operationally.

The Purposes set forth in the Initial Report should not create and should not be considered to create new Contracted Party obligations under the Registry Agreement and Registrar Accreditation Agreement, including those as applicable, to provide or disclose data to ICANN. The recently proposed Purpose O referenced (but not detailed) in the Initial Report³ would create such new obligations. The proposed Purpose O raises another problem, namely, the possibility that the EPDP Team will develop new or materially different policy recommendations and include them in its Final Report to the GNSO Council, but not subject them to public comment before doing so. It is not appropriate for any PDP WG to propose new or materially different policy recommendations in its Final Report without providing the community an opportunity to comment. This is especially true for a subject as complex and important as GDPR compliance in the domain name registration ecosystem.

The Initial Report itself raises concerns. The lack of agreement behind the individual recommendations is clear. The lack of consensus calls is clear. The CPH understands that some within the community have interpreted the decision to include those non-consensus recommendations in the Initial Report to solicit community input about them, as consensus agreement with those non-consensus recommendations. Although the Initial Report is written to suggest that the EPDP Team developed the recommendations, the CPH understands that it did not. To the contrary, ICANN Staff developed the specific language of the recommendations, many of which could not be tracked back to specific EPDP Team decisions or discussions. The timing of the Initial Report (and the time diverted to access discussions) left little time for the EPDP Team to properly deliberate on all recommendations, the data elements workbooks, or the Initial Report text itself. While the CPH understands the tremendous time pressure the EPDP Team faces, it is important for the integrity of the PDP process that working group members not be surprised by Initial Report recommendations, be able to trace the origin of recommendations, and have adequate time to sufficiently deliberate those recommendations. In addition, the EPDP Team must focus on creating a report that lends itself to a clear, implementable Consensus Policy. The Initial Report is simply too ambiguous.

The CPH welcomes and appreciates the intended efficiency sought through the new public comment form. However, the Initial Report public comment period was not the best choice for introducing this form to the ICANN community given the complexity of issues, the short public comment period duration, and the impending holiday breaks. The public comment form does not lend itself to overarching comments such as this one; thus, this letter. The public comment form, if used independently of an additional comment such as this, only allows responses to specific guided questions, thus potentially missing important inputs and insights from the community. In addition to this letter, the CPH intends to provide a thorough data audit and analysis for the EPDP Team's consideration in an effort to streamline the remaining work and provide some of the absent fundamental analysis.

² "In this document, the term "ICANN Purpose" is used to describe purposes for processing personal data that should be governed by ICANN Org via a Consensus Policy. Note there are additional purposes for processing personal data, which the contracted parties may pursue, such as billing customers, but these are outside of what ICANN and its community should develop policy on or contractually enforce. It does not necessarily mean that such purpose is solely pursued by ICANN Org." (Initial Report, p. 98)

³ "ALAC, BC, and IPC proposed to consider a Purpose for Processing Registration Data to address the needs and benefits provided by DNS security and stability research through publication of reports on threats to the operational stability, reliability, security, global interoperability, resilience, and openness of the DNS." (Initial Report, p. 30)

Finally, the CPH is acutely aware of the time and resources that the Contracted Parties will need for the complex implementation of Board-approved policy recommendations arising from this EPDP. Even the 16-week period between the EPDP Team's Final Report and anticipated Board approval is not sufficient. Accordingly, a transition period between the Temporary Specification and implementation of consensus policy recommendation appears inevitable. The EPDP Team should devote some consideration and deliberation to recommendations for a transition period. Further, the CPH urges the EPDP Team to be mindful of implementation considerations (especially cost and personnel) in its remaining work. Consensus policy recommendations are meaningful only if implementable without undue risk, burden, and cost.

As we noted initially, Contracted Parties have much at stake in the EDPP Team's successful and timely completion of its work. CPH representatives have participated in the EPDP in good faith; invested significant time, expertise and energy into the EPDP Team's work; have repeatedly made efforts to find compromise positions; and commit to continuing to do so.

Respectfully submitted,

Donna Austin
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