

EPDP Team Meeting

4 September 2018

Meeting #10

Agenda

1. Roll Call & SOI Updates
2. Welcome and Updates from EPDP Team Chair
 - Update on status of triage report and expected next steps
 - Update on status of early input received and proposed approach for considering early input
 - Other updates, if applicable
3. Proposed modifications to section 4.4 - Registrar / Registry / ICANN processing of data
 - a) Review proposed modifications put forward by the Registrar Team
 - b) Consider input from EPDP Team members on proposed modifications
 - c) Agree on next steps
4. Proposed modifications to section 4.4 – introductory paragraph
 - a) Review proposed modification put forward by Alex Deacon
 - b) Consider input from EPDP Team members on proposed modifications
 - c) Agree on next steps

Agenda (continued)

5. Status update on modifications to section 4 – Third Party Legitimate Interests
 - revised language for §4.4.2 (Amr Elsadr)
 - revised language for §4.4.8 (Alex Deacon & Amr Elsadr)
 - revised language for §4.4.9 (Ashley Heineman)

 6. Proposed modifications to Appendix C
 - a) Review draft recommendation to ICANN that the subject matter be taken out from consideration by this group and folded into current CPH-ICANN negotiations regarding registration data elements of the RAA and RA. (Alan Woods)
 - b) Review proposed amendments to Appendix C, section 2, Lawfulness of Processing, that includes all GDPR mechanisms that allow processing of data (Alex Deacon)
 - c) Agree on next steps

 7. (Tentative) Data matrix formed from RDS work and Thomas's chart

 8. (Tentative) Introduction to Appendix A

 9. Confirm action items and questions for ICANN Org, if any

 10. Wrap and confirm next meeting to be scheduled for Thursday 6 September at 13.00 UTC.)
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Welcome and updates from EPDP Team Chair

Agenda item #2

Updates

- ⦿ Update on status of triage report and expected next steps
 - Bring report back to basics by removing issue summaries and incorporating survey responses instead
 - Meets the request of the Council and hopefully removes concerns that were expressed in relation to role and wording of issue summaries
 - To be submitted to the GNSO Council later this week.

- ⦿ Update on status of early input received and proposed approach for considering early input
 - Early input received from ALAC, BC, NCSG and SSAC
 - Input largely in line with input received in response to triage surveys
 - Support team to integrate input into related DSIs

- ⦿ Other updates, if applicable

Proposed modifications to section 4.4 - Registrar / Registry / ICANN processing of data

Agenda item #3

Registrar / Registry / ICANN processing of data

a) Review proposed modifications put forward by the Registrar Team

[Insert proposed modifications]

b) Consider input from EPDP Team members on proposed modifications

[Insert any input received on the mailing list]

c) Agree on next steps

- Deadline for further comments / input
- Who will be responsible for reconciling comments / input?
- Further review during next meeting or possible to finalize proposed language via the mailing list?

Proposed modifications to section 4.4 – introductory paragraph

Agenda item #4

4.4 - Introductory Paragraph

- a) Review proposed modifications put forward by Alex Deacon

Section 4.4

However, such Processing must be in a manner that complies with the GDPR, including on the basis of a specific identified purpose for such Processing. Accordingly, Personal Data included in Registration Data may be Processed on the lawful bases as scoped in GDPR Article 2 or as enumerated in GDPR Article 6.1, and for at least the following legitimate purposes:

Author Deleted:

Author Deleted: basis

Author Deleted: ,

Author Deleted: of a legitimate interest not overridden by the fundamental rights and freedoms of individuals whose Personal Data is included in Registration Data

Author Deleted: only

- b) Consider input from EPDP Team members on proposed modifications

[Insert any input received on the mailing list]

- c) Agree on next steps

- Deadline for further comments / input
- Who will be responsible for reconciling comments / input?
- Further review during next meeting or possible to finalize proposed language via the mailing list?

Status update on modifications to section 4 – Third Party Legitimate Interests

Agenda Item #5

Status Update

- ⦿ revised language for §4.4.2 (Amr Elsadr)
- ⦿ revised language for §4.4.8 (Alex Deacon & Amr Elsadr)
- ⦿ revised language for §4.4.9 (Ashley Heineman)

- Proposed revisions due by Wednesday 5 September at 22.00 UTC
- Are further updates needed to 4.4.10 (provision of zone files)
- Third party legitimate interests to be integrated into Appendix A – Section 4 (access to non-public registration data)

Proposed Modifications to Appendix C

Agenda Item #6

Appendix C

- a) Review draft recommendation to ICANN that the subject matter be taken out from consideration by this group and folded into current CPH-ICANN negotiations regarding registration data elements of the RAA and RA. (see email from Alan Woods)
- Appendix C is an emergency substitute for the GDPR-mandated data protection agreements between ICANN and Contracted Parties.
 - GDPR explicitly requires execution of appropriate data protection agreements (e.g., Data Processing Agreement, Joint Controller Agreement, Industry Code of Conduct) between ICANN and contracted parties.
 - ICANN and the Contracted Parties should, by law, address the subject matter of Appendix C via separate contractual negotiations.
 - Removal of Appendix C in no way diminishes discussions regarding third-party access to registration data; e.g. Appendix A, § 4 accommodates this discussion (for say, Disclosure of non-public RDDS/WHOIS data).
- b) Consider input from EPDP Team members on draft recommendation [Insert any input received on the mailing list]
- c) Agree on next steps
- Deadline for further comments / input
 - Who will be responsible for reconciling comments / input?
 - Further review during next meeting or possible to finalize recommendation via the mailing list?

Appendix C - continued

b) Review proposed amendments to Appendix C, section 2, Lawfulness of Processing, that includes all GDPR mechanisms that allow processing of data (Alex Deacon)

Appendix C.2

2. Lawfulness of Processing

For Personal Data Processed in connection with the Registration Data Directory Services, such Processing will take place on the lawful bases as scoped in GDPR Article 2 and as enumerated in GDPR Article 6.1, For other Personal Data collected for other purposes, such Personal Data SHALL NOT be Processed unless a legal basis specified under Article 6(1) GDPR applies.

Author

Deleted: basis of a legitimate interests of the Controller or of the third party or parties to whom the Personal Data are disclosed, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of Personal Data

Author

Deleted: in particular where the data subject is a child.

- Consider input from EPDP Team members on proposed amendments
[Insert any input received on the mailing list]
- Agree on next steps
 - Deadline for further comments / input
 - Who will be responsible for reconciling comments / input?
 - Further review during next meeting or possible to finalize recommendation via the mailing list?

(tentative) Data matrix

Agenda Item #7

Objective

- ⦿ Charter Question b2: “What data is collected because it is necessary to deliver the service of fulfilling a domain registration, versus other legitimate purpose”
- ⦿ Charter Question b1: “What data should registrars be required to collect for each of the following contacts: Registrant, Tech, Admin, Billing?”

Once these two questions have been addressed, the matrix could be further updated and elaborated to address other related charter questions:

- ⦿ Transfer of data from registry to registrar (charter question c)
- ⦿ Transfer of data from registrar/registry to data escrow provider (charter question d)
- ⦿ Transfer of data from registrar/registry to ICANN (charter question e)
- ⦿ Publication of data by registrar/registry (charter question f)

All data elements currently required (just for comparison)	Data elements the Registrar must collect to perform the contract (6 I b GDPR - "processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract")	6 I f: "processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child."
	Registry-Registrar-ICANN Contract Purposes (Currently: 4.4.1, 4.4.3, 4.4.4, 4.4.5, 4.4.6, 4.4.7, 4.4.11, 4.4.12)	Third Party Legitimate Interests (Currently: 4.4.2, 4.4.8, 4.4.9, 4.4.10)
Domain Name	Domain Name	Domain Name
Registry Domain ID		
Registrar Whois Server	Registrar Whois Server	Registrar Whois Server
Registrar URL	Registrar URL	
Updated Date	Updated Date	Updated Date
Creation Date	Creation Date	Creation Date
Registry Expiry Date	Registry Expiry Date	
Registrar Registration Expiration Date	Registrar Registration Expiration Date	Registrar Registration Expiration Date
Registrar	Registrar	Registrar
Registrar IANA ID	Registrar IANA ID	
Registrar Abuse Contact Email	Registrar Abuse Contact Email, must be role contact	Registrar Abuse Contact Email
Registrar Abuse Contact Phone	Registrar Abuse Contact Phone, must be role contact	Registrar Abuse Contact Phone
Reseller	Reseller	
Domain Status	Domain Status	Domain Status
Registry Registrant ID		
Registrant Fields	Registrant Fields	Registrant Fields
<ul style="list-style-type: none"> • Name 	<ul style="list-style-type: none"> • Name 	<ul style="list-style-type: none"> • Name
<ul style="list-style-type: none"> • Organization (opt.) 	<ul style="list-style-type: none"> • Organization (opt.) 	<ul style="list-style-type: none"> • Organization (opt.)
<ul style="list-style-type: none"> • Street 	<ul style="list-style-type: none"> • Street 	<ul style="list-style-type: none"> • Street
<ul style="list-style-type: none"> • City 	<ul style="list-style-type: none"> • City 	<ul style="list-style-type: none"> • City
<ul style="list-style-type: none"> • State/province 	<ul style="list-style-type: none"> • State/province 	<ul style="list-style-type: none"> • State/province
<ul style="list-style-type: none"> • Postal code 	<ul style="list-style-type: none"> • Postal code 	<ul style="list-style-type: none"> • Postal code
<ul style="list-style-type: none"> • Country 	<ul style="list-style-type: none"> • Country 	<ul style="list-style-type: none"> • Country
<ul style="list-style-type: none"> • Phone 	<ul style="list-style-type: none"> • Phone 	<ul style="list-style-type: none"> • Phone
<ul style="list-style-type: none"> • Phone ext (opt.) 	<ul style="list-style-type: none"> • Phone ext (opt.) 	<ul style="list-style-type: none"> • Phone ext (opt.)
<ul style="list-style-type: none"> • Fax (opt.) 	<ul style="list-style-type: none"> • Fax (opt.) 	<ul style="list-style-type: none"> • Fax (opt.)
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<ul style="list-style-type: none"> • Email 	<ul style="list-style-type: none"> • Email 	<ul style="list-style-type: none"> • Email
2nd E-Mail address		
Admin ID		
Admin Fields		Admin Fields
<ul style="list-style-type: none"> • Name 		<ul style="list-style-type: none"> • Name
<ul style="list-style-type: none"> • Organization (opt.) 		<ul style="list-style-type: none"> • Organization (opt.)
<ul style="list-style-type: none"> • Street 		<ul style="list-style-type: none"> • Street
<ul style="list-style-type: none"> • City 		<ul style="list-style-type: none"> • City
<ul style="list-style-type: none"> • State/province 		<ul style="list-style-type: none"> • State/province
<ul style="list-style-type: none"> • Postal code 		<ul style="list-style-type: none"> • Postal code

(tentative) Introduction to Appendix A

Agenda Item #8

Appendix A

1. Registration Data Directory Services

⦿ 1.2. RDDS Search Capabilities

2. Requirements for Processing Personal Data in Public RDDS Where Processing is Subject to the GDPR

3. Additional Provisions Concerning Processing Personal Data in Public RDDS Where Processing is not Subject to the GDPR

4. Access to Non-Public Registration Data

5. Publication of Additional Data Fields

Section 1. Registration Data Directory Services

Category 2b issues:

- ⦿ All parties agree that RDAP will be implemented. Should the date for SLA definition (31 July 2018) be deleted or amended since it has passed? Will any date be germane in the successor document?
- ⦿ There is some uncertainty as to whether a search capability is / should be a contractual requirement. Is the Search Capability paragraph (which places GDPR-required restrictions on the use of search) necessary?
- ⦿ Do the restrictions in this section address the risks associated with the aggregation of data?

Section 2. Requirements for Processing Personal Data (2.1 – 2.3)

EDBP advice (category 1):

- ◉ *The GDPR does not apply to the processing of personal data which concerns legal persons and in particular undertakings established as legal persons, including the name and the form of the legal person and the contact details of the legal person. While the contact details of a legal person are outside the scope of the GDPR, the contact details concerning natural persons are within the scope of the GDPR, as well as any other information relating to an identified or identifiable natural person.*
- ◉ *The mere fact that a registrant is a legal person does not necessarily justify unlimited publication of personal data relating to natural persons who work for or represent that organization, such as natural persons who manage administrative or technical issues on behalf of the registrant.*
- ◉ *For example, the publication of the personal email address of a technical contact person consisting of `firstname.lastname@company.com` can reveal information regarding their current employer as well as their role within the organization. Together with the address of the registrant, it may also reveal information about his or her place of work.*
- ◉ *In light of these considerations, the EDPB considers that personal data identifying individual employees (or third parties) acting on behalf of the registrant should not be made publically available by default in the context of WHOIS. If the registrant provides (or the registrar ensures) generic contact email information (e.g. `admin@domain.com`), the EDPB does not consider that the publication of such data in the context of WHOIS would be unlawful as such.*

Section 2. Requirements for Processing Personal Data (2.1 – 2.3)

Category 2a:

- Is section 2.1 (coupled with sec. 3) is overly broad in that: (1) GDPR data restrictions can be applied globally and include entities (registrars, registries, registrant) located outside the EEA, and (2) data restrictions need not be applied to Legal persons where personal data is not included in the record? Or is it appropriately written given that the legal/natural distinctions cannot be made a priori and attempting to distinguish these differences is not implementable? What are the operational / implementation issues for registrars?
- Should “thin” registries should be required to move to “thick” as part of this Temporary Specification?
- Section 2.3: Should data in addition to what is specified in the Temporary Specification be redacted (e.g., organization name, city, postal code) as personal information can be gained from them? The Temporary Specification mentions "consent" without a requirement or specification for such. Should this group take that up?

Section 2. Requirements for Processing Personal Data (2.4)

EDBP advice (category 1):

- ⦿ *The EDPB considers that registrants should in principle not be required to provide personal data directly identifying individual employees (or third parties) fulfilling the administrative or technical functions on behalf of the registrant. Instead, registrants should be provided with the option of providing contact details for persons other than themselves if they wish to delegate these functions' and facilitate direct communication with the persons concerned. It should therefore be made clear, as part of the registration process, that the registrant is free to (1) designate the same person as the registrant (or its representative) as the administrative or technical contact; or (2) provide contact information which does not directly identify the administrative or technical contact person concerned (e.g. admin@company.com). For the avoidance of doubt, the EDPB recommends explicitly clarifying this within future updates of the Temporary Specification.*

Section 3. Additional Provisions Concerning Processing Personal Data

Category 2a:

- ⦿ Is the GDPR applied overly broad by also including entities outside of EEA as well as applying it to legal persons?

Section 4. Access to Non-Public Registration Data

EDBP Advice (Category 1):

- ⦿ *The EDPB considers that, unless there is an explicit prohibition in national law, appropriate logging mechanisms should be in place to log any access to non-public personal data processed in the context of WHOIS. In this context, such logging is considered required as part of the security obligation of controllers (article 32), as well as the obligation and in order to be able to demonstrate compliance with the GDPR (accountability) (article 5(2)).*
- ⦿ *Ensuring traceability of access through appropriate logging mechanisms does not necessarily require active communication (pushing) of log information to the registrant or third parties. It is up to ICANN and other controllers participating in the WHOIS system to ensure that logging information is not disclosed to unauthorized entities, in particular with a view of not jeopardizing legitimate law enforcement activities. Data subject rights, including the right of access, must however be accommodated unless one of the exceptions under the GDPR applies or if national legislation provides for a restriction in accordance with the GDPR (article 23).*

Section 4. Access to Non-Public Registration Data

Category 2a:

- ⦿ Does this section need to be modified as not all disclosure of data will take place on the basis of Art. 6(1)(f) of the GDPR?

Category 2b:

- ⦿ What is meant by "reasonable" access? Should "reasonable" be deleted?
- ⦿ There is concern that individual decisions or rulings will be construed as rules of law and be implemented haphazardly by registrars. Instead, should case law be interpreted and used to make a single rule-set for all registrars?

Section 5. Publication of Additional Data Fields

Category 2b:

Support for the publication of additional data fields, per comments in response to triage survey:

- ⦿ Should there should be some measure of standardization of the output?
- ⦿ Is inclusion of Appendix C problematic and should the team revisit this language when Appendix C is reviewed

Next Steps

- ⦿ Agree on next steps and proposed timing in relation to Appendix A

Wrap Up

Agenda item #9 & #10

Wrap Up

Review actions items and questions for ICANN Org, if any

Next meeting to be scheduled for Thursday 6 September at 13.00 UTC