

EPDP PHASE 2 – INITIAL REPORT INPUT FORM

Color coding:

Green – change applied as suggested

Yellow – change applied but in modified form

Orange – change not applied

Blue – change not applied, input needed from others or other groups who originally suggested language that is suggested to be changed / removed

White – no specific suggestions have been provided. Not clear what the suggested changes are.

CANNOT LIVE WITH ITEMS

Line numbers & topic	Group	Rationale	Proposed Changes	Staff Support Team proposed resolution
1. 16-18 (Response to question from Council)	RySG	The initial report does not explicitly answer the first question from the GNSO council.	Add: In response to the question from council “Whether any updates are required to the EPDP Phase 1 recommendation on this topic (“Registrars and Registry Operators are permitted to differentiate between registrations of legal and natural persons, but are not obligated to do so”);” there was not consensus support that updates are required.	In response to other comments, updates have been made to make the response more explicit in preliminary recommendation #1
2. 33	IPC, ALAC, GAC	This is the starting point.	“As a starting point, the GDPR does not apply to legal person data.” ¹	Change applied so that sentence reads: “As a starting point, the EPDP Team notes that the GDPR does not apply to legal person data ² . At the same time, the EPDP Team recognizes that

¹ “This Regulation does not cover 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.”

² “This Regulation does not cover 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.”

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				the European Data Protection Board (“EDPB”) has advised ICANN in a July 2018 letter that “the mere fact that a registrant is a legal person does not necessarily justify unlimited publication....”
3. 34	IPC	This quote does not represent the view of the parties that this paragraph is supposed to represent.	Strike the remainder of this sentence, or at least move it to the next paragraph.	Create new paragraph starting with “The EPDP Team recognizes that there are different perspectives within the EPDP Team on this question. Nevertheless, Some EPDP Team members....” so that quote is not associated with certain perspectives but associated with the information that was discussed in this context.
4. 32-45	BC	The 2 paragraphs from 32 - 65 are quite unbalanced.	to follow... Informed consent; better representation of legal memos; no mention of costs to consumers, LEA, cloud service providers, certificate authorities, rights holders	No specific language provided
5. 33-45, 47-72	ALAC, GAC	This 14 line paragraph merges the “starting point” with the position of those wanting differentiation. It is followed by a 21 line position of those not wanting differentiation. The overall combination is VERY unbalanced.	Separate the pro-differentiation into a new paragraph. Add: the EPDP also recognizes that recital 14 of the GDPR states that the regulation does not cover 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	New paragraph created. Not added (“the EPDP also recognizes”) as it is duplicative of the language and footnote that have been added in response to a). Nevertheless has been removed. Please provide specific language suggestions.

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			<p>person. That is legal persons data that does not include personal information of natural persons is not covered by the GDPR.</p> <p>The pro-differentiation paragraph should NOT start with “Nevertheless” as that puts a negative slant on our position.</p> <p>Include references to the high monetary cost to various parties of not doing differentiation (rights holders, those attempting to domain ownership, consumers, LEA) . And make reference to the legal advice that informed consent (with reasonable precautions and caveates) can be used to effect differentiation.</p>	
6. 32-45	GAC, ALAC	The proper foundation/starting point for our discussions is that the GSPR does not protect the non-personal data of legal entities. This concept needs to come before the text of EDPB which sets forth an exception to this general concept. Agree with other SG observations that the text should separate the context	“As a starting point, the GDPR and other data protection legislation set out requirements for protecting personal data of natural persons. It does not protect the non-personal data of legal persons. The EPDP Team also recognizes that the European Data Protection Board (“EDPB”) has advised ICANN in a July 2018 letter that “the mere fact that a registrant is a legal person does not necessarily justify unlimited	Updates have been made to this section also in line with other comments submitted.

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		<p>for our deliberations with the differing views of the SGs and that the description of the respective positions must be fair and balanced.</p>	<p>publication of personal data relating to natural persons who work for or represent that organization,” and that “personal data identifying individual employees (or third parties) acting on behalf of the registrant should not be made publicly available by default in the context of WHOIS”³.</p> <p>The EPDP Team discussed this question extensively and recognizes that there are different perspectives within the EPDP Team on this question.</p>	
7. 39-45	GAC, ALAC	This sets forth our views	<p>Some EPDP Team members are of the view that differentiation should be required for many reasons that benefit the public. First, a significant percentage of domain names are registered by legal entities and the GDPR generally does not protect their domain name registration data. Further, to the extent that personal information is included in such registration data, the legal guidance received indicates that it is likely to be “low sensitivity” because it relates to an employee’s work details rather than their private life. Given the surge in internet-based crimes</p>	Change applied – others who suggested edits to this paragraph to review and make sure it has not resulted in a ‘cannot live with’ item.

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			<p>(including ransomware demands that cripples public infrastructure), publishing the registration data of legal entities would aid law enforcement, consumer protection, and cybersecurity professionals' ability to quickly and more effectively investigate illicit activities facilitated by the DNS. Second, requiring registrars to publish the domain name registration data of legal entities would also significantly reduce the challenges associated with obtaining responses to disclosure. Third, publishing legal persons' data based on differentiation instead of consent significantly reduces the CPs liability. Hence, publishing legal persons' data based on differentiation rather than consent could be considered a best practice. Finally, the legal guidance received stated that if the proper safeguards are followed, the legal risks associated with such publication, even in the event of inadvertent mistakes, seem low. Hence, on balance, the public interest favors differentiating between registrations of legal and natural persons.</p>	

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8. 45	IPC, ALAC	This is our actual perspective.	"rather than consent should be mandatory."	Changes have been applied as a result of the previous comment (g) – please indicate if this change is still a cannot live with item with the other changes that have been applied.
9. 44	IPC, ALAC	Significant oversight	"5) redacted data is largely unavailable to those who need it, even upon request"	Changes have been applied as a result of the previous comment (g) – please indicate if this change is still a cannot live with item with the other changes that have been applied.
10. 55	IPC, ALAC, GAC	It's simply unfair to assert that "no evidence has been presented"	"insufficient evidence" or "unpersuasive evidence" may be more accurate	Change not applied – "no evidence" is preceded with "In their view" to make clear that this is the perspective of those that are of the view that the existing phase 1 recommendation is sufficient.
11. 74-84	RySG	The RYSG recommends the removal of recommendation 1 in its entirety. As per our past comments relating to this recommendation, the RYSG continues to maintain that the inclusion of a recommendation, which is in effect merely recommending that the GNSO continue to perform their actual function, is simply not appropriate. We are not supportive of any recommendation that is, on the face of it, simply outside of our scope. Whereas we understand and empathise with the statement of some	The RYSG supports encouraging the GNSO to be vigilant in the pursuit of their policy duties, we would recommend removing this as a specific recommendation , and make it a general observation in the text of the report, as is more appropriate.	The recommendation has not been deleted. Even though nothing prevents Council members from raising specific issues, the Council as such does not proactively monitor developments that have been called out here.

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		<p>of our colleagues that they do not believe the GNSO process is agile enough to deal with changes that may be presented by proposed legislation, such as NIS2.0, we respectfully disagree. We furthermore must note that it is not the task of the ePDP to criticize, directly or indirectly, or otherwise suggest any recommendation which is aimed, not at the task the GNSO has set for us, but is more focussed on changing established GNSO processes. Such matters should be raised in the appropriate fora, of which the ePDP is not one.</p>		
12. 86-88	RySG	<p>The RySG disagrees that the group has recognized a need for harmonization of practices. The team’s work has focused on the end goal of increasing differentiation, but there has been no findings that harmonization is more beneficial to reaching that goal. We are concerned</p>	Delete	<p>This sentence says ‘MAY’, it does not claim there is a recognized need. Sentence has been added to call this out for public comment: “The EPDP Team would welcome further input on why harmonization of practices may or may not be beneficial”.</p>

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		that this unsupported assumption is part of what is driving recommendation #2 (see comments below) which should require a more robust justification for the level of changes proposed.		
13. 86	IPC, ALAC	more accurate	“there is a need to facilitate and harmonize”	Change not applied – it has not been demonstrated that there is a need to facilitate and harmonize, it is an assumption that the EPDP Team has made.
14. 90	GAC	More descriptive	“illustrative best practices” rather than guidance	Change not applied. For now this is called “guidance” – a question has been called out for community input on whether it should be called differently, including best practices.
15. 90-97	SSAC	Ensure the data element can be extensible	New text: This data element should be defined in an extensible way. This field must support enumerated values of “Legal, Natural, and Unknown” but should be able to expand in future to accommodate additional data.	EPDP Team to discuss – is this necessary or it is per definition extensible. If this language is added, it may need to specify who/how extensions are made?
16. 112-165	RySG	The RySG does not support the creation of this new flag in the RDDS as we have noted in our comments during plenary calls and feedback and are opposed to this recommendation for the reasons we have already provided.	Delete section (covering rec #2) Notwithstanding our comments relating to recommendation 3, we do believe it would be the more acceptable option to include such a suggestion relating to consistent labelling and handling of potential flags within the body of the voluntary	Deletion not applied but a footnote has been added to indicate the RySG’s objection to the inclusion of this recommendation.

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		<p>The RYSG does not support the inclusion of Preliminary recommendation 2. We must remind the team that our scope was to consider any change to recommendation 17; such a change was to be based on the consideration of legal advice and of the outputs of the ICANN study, which were not available at the time of the conclusion of phase 1, ePDP. Having completed our discussions, it is clear that the prevailing conclusion was, that there is no consensus to change Recommendation 17. We were not empowered to go beyond such a task and, as such, our recommendations must be so limited.</p> <p>For the absence of all doubt, the RYSG does not believe it is in our remit for the EPDP team to now suggest binding policy recommendations that not only does NOT require a change to recommendation</p>	<p>guidance (e.g. Preliminary Recommendation 3.3).</p>	

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		<p>17, but that requires no less than 4 changes to other EPDP Phase 1 recommendations, as well as additional change to the Registry Registration Directory Services Consistent Labeling and Display Policy.</p> <p>Moreover, we don't believe a sufficient justification has been presented for why a flag is required. As noted above, we have not agreed, as a team, that harmonization - on its own a vague justification - is necessary to achieve increased differentiation. The guidance in Recommendation 3 suggests that this flag would be useful for reviewing disclosure decisions, but if differentiation has occurred then the data with a "Yes" flag should already be published and would not require a disclosure request. In fact, the only rationale we have heard clearly articulated by those proposing this flag is</p>		

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		that it would assist in tracking which parties are implementing the guidance. We cannot support such a significant change on the basis that it may assist in tracking the implementation of voluntary guidance that is in no way required to be implemented.		
17. 115-124	RySG	The RySG is opposed to these proposed changes to phase 1 rec 5. The data elements to be captured does not make sense in view of the discussions we have had in the working group. The guidance section (3) already includes standardizing of the fields and is the appropriate place for this. We further note that guidance (7) indicates that a flag on legal person status alone isn't sufficient. We aren't following our own guidance.	Remove changes to phase 1 rec 5	Changes not applied – see also previous response.
18. 119	bc, IPC, ALAC, GAC, SSAC	Remains option, but is constrained if option is taken; remains optional but	"MUST (if CP chooses to Differentiate)"	Change applied – added "MUST (if CP chooses to differentiate)*" to make clear that the EPDP Team has not decided yet whether it is a MAY or MUST IF. Also added sentence to paragraph

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		must follow if elects to differentiate		above: "Aspects of the recommendation that the EPDP Team is looking for specific input on having been marked with *, indicating the options that are under consideration."
19. 124	IPC, GAC	clearer and more accurate. RNHs may want or need to provide personal data if the domain is owned by a natural person, for example.	"as a legal or a natural person."	Change applied
20. 124	ALAC, GAC	Inaccurate	personal data MAY be provided with appropriate consent.	Change applied – added "(or provide appropriate consent if personal data is involved)".
21. 126-129	RySG	The RySG is opposed to these proposed changes to phase 1 rec 7. Noting our above comments relating to our scope, it is not appropriate for the working group to make this recommendation even as a MAY. The ability for a registry to specify additional fields if required is already accounted for in the phase 1 recommendations.	Remove changes to phase 1 rec 7	Changes not applied – but in line with a previous comment a footnote has been added to indicate the RySG's objection to the inclusion of this recommendation.
22. 129	IPC, ALAC, GAC, SSAC	more accurate	"MUST (if CP chooses to Differentiate)"	Change not applied – please provide specific rationale. CPs have indicated that it is problematic to require the transfer of this kind of information.
23. 131-138	RySG	The RySG is opposed to these proposed changes to phase 1 Rec 8. The RySG does not	Remove changes to phase 1 rec 8	Changes not applied – but in line with a previous comment a footnote has been added

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		believe it is appropriate for this field to be escrowed as any party receiving this data (from escrow) is unlikely to be able to rely on the data and will need to perform their own assessment following their processes.		to indicate the RySG's objection to the inclusion of this recommendation
24. 136	IPC, ALAC, GAC, SSAC	more accurate	"MUST (if CP chooses to Differentiate)"	Change not applied – please provide specific rationale. As has been explained, this information is not necessary to restore the registration in case of registrar / registry failure and would in any case need to be reconfirmed by the new registrar / registry.
25. 138	IPC, ALAC, GAC, SSAC	more accurate	"MUST (if data is provided)"	See previous response
26. 140-165	RySG	The RySG reiterates our opposition to the inclusion of this field in the public RDDS. We have not heard a compelling explanation for why this would be desirable and are of the view that the publication of this new field would likely cause confusion. We have proposed guidance that this information should NOT be displayed in the public RDDS.	Remove changes to phase 1 rec 10 and subsequent text	Changes not applied – but in line with a previous comment a footnote has been added to indicate the RySG's objection to the inclusion of this recommendation.

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27. 161	IPC, ALAC	Wordiness and confusion. The existence of the data element is different from an obligation to populate it	“the existence of this data element does not require a Contracted Party to differentiate between...”	Change applied as this seems to be a clarifying change, not a substantive one.
28. 167	IPC	We object to this as a blanket assertion. This could also apply in other situations, including where CPs have a legal obligation to distinguish.	Strike footnote 5.	Change not applied – this footnote was added at the request of the GAC. GAC to confirm whether it can live with the removal of this footnote.
29. 200-214	IPC, BC, ALAC, GAC	What is the point of this section (D.)? References to “controller” are not helpful as ICANN has recently avoided ‘admitting’ its controllership. Each CP must determine for itself if/how data protection law might impact its processing. This appears to be quasi-legal advice, which should be avoided. We should also avoid paraphrasing the GDPR.	Strike	Action item was assigned to GAC and RrSG Team to review this section and factor in concerns about it.
30. 240-50	IPC, ALAC	Burden is on RrSG to show why any such guidance would be inappropriate for any given business model. We do not think this is relevant, nor has any evidence been presented as	Strike	Text has not been deleted but “must” has been changed to “should” in line with how this has been done for other parts of the guidance. Note, that the RrSG has provided input on multiple occasions as to why flexibility is needed to accommodate different business models.

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		to why any given business model would preclude consistent guidance. Especially object to “must” in line 244 as we have noted previously.		
31. 247 -49	GAC, ALAC	There has not been a sufficiently clear and persuasive reason given why the Registrar or those to whom it contracts (such as resellers) can not follow the proposed guidance at the time of registration.	Delete	This has been discussed extensively. The guidance already notes that this option should happen “at the time of registration, or without undue delay after registration”.
32. 251-58	IPC, ALAC, GAC	<p>This is a bizarre formulation. As a first observation, we need to note that most groups (e.g. BC, IPC, GAC, ALAC, SSAC) are looking for mandatory requirements here, i.e. consensus policy, not merely guidance/ best practices.</p> <p>ALAC Comment: This latter part is important. The Initial report MUST make it clear that although we are just providing “guidance”, that was NOT the desired</p>		Added to the existing footnote that “On the other hand, the IPC, ALAC and GAC members have advocated that there should be mandatory requirements i.e. consensus policy, not merely guidance/best practices.” Note, other groups listed in this comment should confirm whether their group should be added to this footnote (BC, SSAC).

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		outcome of significant parts of the EPDP.		
33. 254-295	RySG	<p>The RYSG is supportive of the concept of guidance for contracted parties, but we do note, in order to be actionable and effective, such guidelines should be based on the necessary and practical knowledge, peculiar to the contracted parties. Therefore, to be clear the RYSG does not support practices, best, good or otherwise, which are not created with deference to the specific expertise and practical understanding of the underlying processes being proposed. We believe that publication of any such practices, without the reasonable agreement of the affected controllers, serves minimal purpose. We are not convinced that the practices as drafted meet this standard.</p> <p>This being noted, we do further wish to state that the</p>		No specific edits suggested. RySG is encouraged to take this guidance back to Contracted Parties during the public comment period to obtain the specific expertise and practical understanding of the underlying processes being proposed.

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		<p>guidance as presented, tends towards a mere restatement of expected outcomes, and fails to provide meaningful insight into the practical means to achieve those outcomes. As an example, we have reiterated since Phase I that the hardest issues facing Contracted Parties in making differentiation decisions is natural person data included in a legal person registration, and whether such third-parties have provided appropriate consent for the publication of their data. Point 7 (292-295) does nothing to help parties actually grapple with how to make those calls. We note that a large portion of such specific and practical guidance was provided to the team by way of the legal memos, but this unfortunately remains excluded.</p> <p>Should the guidance be retained as drafted, we feel it</p>		

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		<p>necessary to state, at this point, that it is hard to envisage any CP following such guidelines. We must be clear that this is NOT because we believe guidelines would not be welcomed, but simply that the guidelines as stated do nothing to guide practical implementation and thus are not fit for purpose and do not offer any comfort to those parties who are legally exposed. As drafted they remain loose suggestions aimed at achieving a predetermined outcome, and do not fully consider stated limitations and feasibility concerns.</p>		
34. 256-58	IPC, ALAC, GAC	<p>We should strike this; it's misleading. It IS the role of the EPDP team to mandate CP action, and it is up to the CPs to determine whether they want to be in this business which requires such actions, including associated risks.</p>	<p>Consider striking this sentence altogether. Delete lines 256-58 starting with "However" as unnecessary.</p>	<p>Change not applied – this is not a requirement so the EPDP Team is not mandating CP action.</p>

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35. 258	IPC, GAC	There is likely more than one data controller	“controller(s) and processor(s).”	Added (s) to controller. Not clear how a processor is relevant as the responsibility for this decision seems to belong to the controller?
36. 260	IPC	Align with the need for consensus policy. We won't add a line here for each instance, so long as we capture broadly the need for this to be a requirement and not merely guidance/should language	“MUST” in place of “should”	There is no consensus on making this a requirement. This is included as guidance so “should” is appropriate.
37. 262	IPC, GAC, ALAC	15 days after registration is insufficient for cases of e.g. phishing attacks which happen instantaneously. This must happen at the time of registration and ownership change.	Strike “, or without undue delay after registration”	This is guidance and timeline was added following EPDP Team deliberations, in line with other timing requirements in the RAA.
38. 264-65	GAC	This formulation potentially adds 30 days after registration to the time period for designation.	Delete.	Change not applied. This captures, amongst others, existing registrations and is consistent with the timelines in the Whois Accuracy Program Specification of the RAA.
39. 265-68	IPC, ALAC, GAC	This is not a correct interpretation/application of data protection by design and default. Data may be processed and disclosed based on a number of factors, including consent. This overlooks a 6.1.c. basis which may apply in the	Strike.	Change not applied. This language has been included for a number of iterations without any edits suggested. Also, NIS2 does not seem to change the notion that data of natural persons is protected under GDPR – if so, please provide specific references.

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		context of NIS 2, for example, or a 6.1.f. basis which may apply broadly across the DNS (i.e. not on a CP-by-CP or RNH-by-RNH basis).		
40. 269-274	RySG	As noted in calls and our feedback to documents, the RySG is supportive of the use of standardized data elements but not their inclusion in the public RDDS.	Change text to: As part of the implementation, Registrars should consider using a standardized data element in their own data sets that would indicate the type of person it concerns (natural or legal) and, if legal, also the type of data it concerns (personal or non-personal data). Such flagging could facilitate review of disclosure requests and automation requirements via SSAD and the return of non-personal data of legal persons by systems other than SSAD (such as Whois or RDAP).	RySG objection has been noted in the Initial Report (in line with previous comments).
41. 269	IPC	make mandatory	“must use” in place of “should consider using”	This has been called out as a question for input during public comment. Updates can/will be made after the EPDP Team has had an opportunity to review the input.
42. 270	IPC, ALAC, GAC	as we’ve argued, this must be in the public data set; there has been no argument proffered why not	strike “, SSAD or their own data sets”	Change not applied – this is still open for discussion.
43. 274-276	RySG	It is unclear to the RySG how a flagging mechanism will indicate changes to the type of data in the registration	Delete: A flagging mechanism may also assist in indicating changes to the type of data in the registration data field(s).	Changes not applied – a change in the flag can indicate that the type of registrant has changed. Some have also pointed out that knowing that it concerns a legal person may indicate a lower

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		data fields. Either the data changes or it doesn't. We are also unclear how flagging helps facilitate review of disclosure decisions, when data that has been flagged as a legal person registration would likely be displayed publicly, obviating the need for a disclosure request.	Delete: "review of disclosure requests and . . ."	risk of inadvertently disclosing personal information which may aid the review process.
44. 288-290	RySG	Registrants identifying as a legal person and confirming that the registration data contains no personal data may not be sufficient in all cases and all jurisdictions to assume publication. The registrar should consider their own applicable laws which vary across jurisdictions. As written the RySG can not support this as (must) guidance.	Delete proposed text	Change not applied – this is guidance. If this is not sufficient in a CPs jurisdiction, there is no requirement to follow. Also, as has been made clear on multiple occasions, local law requirements are not overruled by ICANN policy or in this case guidance.
45. 288 (new guidance)	RySG	As previously noted the RySG is opposed to including information about the type (legal/natural) of registration in the public RDDS. Notwithstanding the above note, we do note that the team has not presented any	if not deleted (as above) then we suggest change/addition: Registrars who choose to differentiate between legal and natural registrations SHOULD NOT include that information in the public RDDS.	EPDP Team to discuss – the proposed change would change the intent of the proposed language to the opposite.

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		justification as to why publication is necessary or why it serves an important purpose. This inclusion remains indicative as to why the guidance presented is objectively considered 'bad practice' when, in the absence of such justifications and strong purposes, an appropriate guidance should, in fact, discourage such publication.		
46. 288	BC, ALAC, GAC	<p>Formatting</p> <p>ALAC Note: It is unclear why there are square brackets. If a registrant has self-declared and confirms no personal data, there is no reason not to mark the registration as such. This is comparable to the Phase 1 Rec. #6 REQUIREMENT that a registrant be allowed to specify that their data not be redacted.</p>	remove square brackets	Change not applied yet – awaiting input from others. As noted in the instruction email, this language is in brackets because it was proposed after the deadline for input.
47. 292-295	GAC, ALAC	lines 288-290 (paragraph 5) already deal with confirming that the registration data d/n contain personal data,	Delete	Change not applied – the EPDP Team has discussed on various occasions that it is important to point out that focusing only on

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		hence this paragraph 7 is unnecessary		differentiation between legal/natural type may not be sufficient.
48. 314	IPC	Registrar should not activate the domain in the DNS until/unless this self-designation has been made	Include this in footnote 16.	Change not applied – this is a whole new concept that has never been discussed or agreed to.
49. 314	IPC	accuracy	Replace “automated disclosure” with “publication”	Change not applied – in the context of SSAD, disclosure has been used (as SSAD responds to requests for disclosure).
50. 328	IPC	accuracy	“after update is complete”	Change applied – this seems a minor edit to ensure consistency with the rest of the section.
51. 341	IPC	Footnote 18: consent is nevertheless possible, but may not be possible to capture/document	“may not be possible to document.”	Change applied – minor edit
52. 326/341	IPC	Unacceptable that this happens “at a later point in time” - collect the representation from the RNH at the time the data is being collected/changed.	Strike footnote 20. This needs to happen at the time of RDS data change, same as it needs to happen at time of RDS data collection.	Change not applied – the footnote is consistent with guidance #1
53. 327-331	IPC	Only ok if this is presented as additional opportunity to self-designate; not as alternative opportunity to self-designate.		Not clear what change is suggested.
54. 338	IPC	Reject. Rely either on RNH representation or CP inference, no “limbo period”		Change not applied – this has been here for various iterations without edits having been proposed.

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55. 339/341	IPC, ALAC	Note that European Commission via GAC reps has recommended this.	Note this recommendation explicitly from E.C. in the guidance.	Please provide specific references to be included.
56. 346	IPC	Consistency with line 342	"should not" in lieu of "must not" - be consistent with line 342	Change applied – minor edit to ensure consistency.
57. 349-390	RySG	The RySG does not support the inclusion of excerpts of the legal memos that are not placed in the appropriate context of the entirety of the legal memo. In particular, the conclusions about the level of risk to Contracted Parties is based on significant assumptions in the call of the question for the 6 April 2021 legal memo, as well as detailed mitigation measures described in both the 6 April 2021 and 25 January 2019 legal memos, none of which is excerpted above in the same manner in order to: (i) place these risk conclusions in the appropriate context; or (ii) provide actual guidance on mitigation measures that Contracted Parties may take to decrease risk.	The legal memos are cumulative, complex, and rely on significant assumptions and analysis to reach a conclusion of low risk. Rather than including excerpted and out of context sections about risk, the full legal memos should be appended to the report to give the reader the full scope of the legal advice on differentiation, verification, mitigation, and the relevant risks.	Change not applied - The full memos have been included in an annex to the Initial Report – the EPDP Team agreed early on that in the context of inadvertent disclosure of personal data it was important to include the specific B & B guidance on this topic here.

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58. 391	IPC	Include the BC/ALAC proposal	Add the proposal in its entirety in this section.	There does not seem to be support for inclusion of this proposal based on feedback on the mailing list. EPDP Team to discuss.
59. 499-500	RySG	The question from the GNSO council isn't directly answered.	Add: in response to the question from council "Whether or not unique contacts to have a uniform anonymized email address is feasible, and if feasible, whether it should be a requirement", there was no consensus to make it a requirement.	This is already captured in the response ("may be technically feasible"... "prevent the EPDP Team from making a recommendation to require"...)
60. 513-517	RySG	The RySG disagrees with the text. This was not discussed or agreed to by the working group.	Delete text	EPDP Team to discuss
61. 524	ALAC, IPC	Many web forms do not allow functional communications with the registrant. It has been suggested that this matter be referred to the Phase 1 IRT, but without a recommendation saying that the policy may set web form content, there is no way for the IRT to establish such enforceable rules.	Add: As it stands, the EPDP Recommendation #13 which is supposed to facilitate communications with the registrant does not achieve its goal. Many registrars are using web forms, and in many cases, they are effectively useless. As an example, one common example is a form that simply lets the requestor select one of three messages (Domain name or content is being used in malware, or for spam or abuse; Domain name or content is infringing on a trademark or violating	Change not applied yet – objections raised on the mailing list to add this recommendation. EPDP Team to discuss.

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			<p>local laws or regulations; or Research or other purpose).</p> <p>Since this Initial Report is not recommending that emails addresses of some form be published in the public RDDS, it is important to ensure that the web form allows sufficient communications with the registrant. As it stands, the EPDP Recommendation #13 which is supposed to facilitate communications with the registrant does not achieve its goal. Many registrars are using web forms, and in many cases, they are effectively useless. As an example, one common example is a form that simply lets the requestor select one of three messages (Domain name or content is being used in malware, or for spam or abuse; Domain name or content is infringing on a trademark or violating local laws or regulations; or Research or other purpose).</p> <p>Accordingly, the EPDP Team recommends:</p> <p>Preliminary Recommendation #4</p>	

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			The Phase 1 Recommendation 13 should be amended to include: Should a Registrar choose to use a web form, that form must allow the requester to specify, at a minimum, the Subject of the email to be sent (up to 64 characters) and a free-form text message of up to 512 characters to be included in the communication to the registrant.	
62. 74 - 84: Preliminary Rec #1	RrSG, NCSG	1) Need to specifically answer the question posed by Council to this team The GNSO Council already monitors developments in relation to relevant law, and can determine what questions should be addressed and when as appropriate.	1) Add a Recommendation #1 clearly indicating that NO changes are needed to the Phase 1 Recommendation on this topic. This recommendation is unnecessary as it does not add to or adjust existing processes, and as such it should be removed.	Change applied - Added to recommendation #1 “No changes are recommended to the EPDP Phase 1 recommendation on this topic (“Registrars and Registry Operators are permitted to differentiate between registrations of legal and natural persons, but are not obligated to do so”). Nevertheless, the EPDP Team recommends that the GNSO Council monitors...”. The rest of the recommendation has been left unchanged. Even though nothing prevents Council members from raising specific issues, the Council as such does not proactively monitor developments that have been called out here.
63. 121 - 124 Preliminary Rec #2 (rec 5)	RrSG, NCSG	This is not appropriate for every different Rr and so it should not be a requirement.	This portion should be removed from this section, as it is already included in the optional guidance.	Changed “are to” to “should” to make clear that this is not a new requirement. Also included reference to the guidance section (“consistent with preliminary recommendation #3, point 4)
64. 144 Preliminary Rec #2 (rec 10)	RrSG, NCSG	Same as previously indicated	Change to "MAY" instead of "MUST"	Added “MAY” to make clear that this is also up for a decision (whether it is up to the registrar to decide to redact or not redact this data

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				element, or whether this is decided as a general requirement (whether the data element is redacted or not).
65. 161 - 165 Preliminary Rec #2	RrSG	This section should clearly indicate that "unspecified" person type is not an issue of inaccuracy to avoid future misinterpretation	Add language stating "unspecified" person type is not an issue of inaccuracy	Added footnote to provide more clarity about what 'unspecified' is intended to indicate.
66. Preliminary Rec #3 (footnote 11)	RrSG	The Council Instructions specifically requested "guidance", we should stick with that.	Remove call for input on best practice vs Guidance	A number of groups have suggested that other terminology should be considered. The Council can provide input to the group on this topic if it is of the view that the reference to "guidance" was an essential element of the instructions provided.
67. 349 - 351 Preliminary Rec #3 (B&B)	RrSG, NCSG	B&B Legal Memos are complex and cannot be properly understood when reviewing only an excerpt. Without the full context of the entire legal opinion, the information presented here is incomplete and could lead to decisions made based on faulty understanding of legal guidance and with a misunderstood risk assumption.	B&B Legal Memos must be included/appended in their entirety and we should not include excerpts here.	The full memos have been included in an annex to the Initial Report – the EPDP Team agreed early on that in the context of inadvertent disclosure of personal data it was important to include the specific B & B guidance on this topic here.
68. 513 - 517 Feasibility of unique contacts	RrSG	Update for clarity	Section should be rephrased as follows: Those Registrars which choose to publish a registrant- or registration-	EPDP Team agreed to include reference to B & B memo for further information on safeguards as no suggestions were provided on what aspects should be called out specifically.

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			based email address in the publicly accessible RDDs MUST ensure appropriate safeguards for the data subject in line with relevant guidance on anonymization techniques provided by their data protection authorities and the appended legal guidance in this recommendation.	
69. 91	NCSG	It is important to include and clearly represent SG's view on the need for guidance.	The text 'the NCSG members believe that the EPDP Team should not be providing guidance as such. These members are of the view that it is best for the Contracted Parties to develop guidance on their own and provide the same to their peers' be included in text instead of footnote.	Change not applied - Footnotes are being used elsewhere as well to indicate the position of specific groups.
70. 288-290	NCSG	1) The team has not agreed on the way of disclosing the data. The guidance is not a requirement. We should avoid mandatory languages such as 'must'.	Remove text marked in yellow	EPDP Team to discuss
71. 39	BC	2) Clarity and Balance	Remove "Nevertheless". Paragraph break between "...context of WHOIS." and "Some EPDP Team members are of the view..."	Changes applied, also consistent with other comments received.
72. 178	BC	3) Additional definition required. We do not have a definition for the act of transmitting Un-Published	Add bullet: "New: Transmission: The act of providing unpublished non-personal data to a third party upon request."	No change made – this section lists definitions that are derived from P1 implementation. Any new definitions need further consideration by the EPDP Team.

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		non-personal data to a third party upon request.		
73. 314	BC, ALAC	4) Provision of unpublished non-personal data is not “disclosure” as it is defined in 178	“(ii) set the registration data set to automated transmission in response to SSAD queries”	No change made – disclosure has been used in the context of SSAD as responses are provided to queries. For a change to be made, EPDP Team will first need to agree on the definition of transmission.
74. 334/5	BC	5) Provision of unpublished non-personal data is not “disclosure” as it is defined in 178	“set to automatic transmission in response to SSAD queries”	No change made – disclosure has been used in the context of SSAD as responses are provided to queries. For a change to be made, EPDP Team will first need to agree on the definition of transmission.
75. 343	BC	6) Provision of unpublished non-personal data is not “disclosure” as it is defined in 178	“(ii) set the registration data set to automated transmission in response to SSAD queries”	No change made – disclosure has been used in the context of SSAD as responses are provided to queries. For a change to be made, EPDP Team will first need to agree on the definition of transmission.
76. Footnote 11	RySG	7) The task from the GNSO council is clearly to consider “what GUIDANCE if any can be provided”. Guidance is what has been discussed and understood by the working group. Changing that by necessity would mean changes to the agreed upon guidance.	Delete: Commenters on the Initial Report are encouraged to weigh in on what terminology is deemed most appropriate and why.	A number of groups have suggested that other terminology should be considered. The Council can provide input to the group on this topic if it is of the view that the reference to “guidance” was an essential element of the instructions provided.
77. NOT YET INCLUDED	RySG	Noting the discussions relating to webforms, in the interest of time, the RYSG		EPDP Team do discuss

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		<p>would like to preempt any inclusion of this concept, purporting to dictate what should be included in any such webforms.</p> <p>We have not been tasked with the consideration of webforms by the GNSO. The deliberations of the team have been limited intentionally by the GNSO, and we have provided an answer to the GNSO question posed - i.e. that consensus is not likely on whether a policy change regarding feasibility of unique contacts (whether anonymized or pseudonymized) is appropriate.</p> <p>The RYSG does not agree with the assertion made by our colleagues, that this lack of consensus on the feasibility of unique contacts, somehow results in leaving 'webforms' as the singular option for Recommendation 13 i.e. 'to facilitate email</p>		

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		<p>communication with the relevant contact'. To clarify, our lack of consensus is NOT a statement that such means or methods cannot be used, but rather that ICANN should not insist on prescribing the means by which unique contacts MUST be used, and subsequently enforcing such expectations on contracted parties. As we have always maintained, CPs should be free to control their own risk in the application of such a choice as presented in Rec 13; this freedom supports innovation and problem solving at source, by experts in the field. As such, stating that as a result of our lack of consensus in the task at hand, that this somehow results in rendering webforms as the only viable option within recommendation 13, is simply incorrect.</p> <p>8) Noting this, the RYSG does not support any unilateral</p>		

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		<p>modification to the scope of Phase 2a in the manner described.</p> <p>Notwithstanding this, and even were it to be an option, we still do not find any compelling reasons, based on the arguments made, to even suggest including webforms in our scope.</p>		