EPDP Phase 1 Recommendation 27: Registration Data Policy Impacts

Wave 1.5 Report

ICANN organization
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ICANN

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Executive Summary

Following the review of existing policies for the Wave 1 report of the Expedited Policy Development Process (EPDP) Phase 1 Recommendation 27, ICANN org has performed a follow-up analysis of the Privacy and Proxy Services Accreditation Issues (PPSAI) and Translation and Transliteration of Contact Information (T/T) policy recommendations, for which implementation has been started but not completed. Implementation work for T/T and PPSAI is on hold pending the completion of the work on the EPDP and related efforts, including this analysis in support of Recommendation 27.

Given the T/T and PPSAI implementations' relationship to the evolution of registration data policies and procedures, this report assesses the identified impacts of the EPDP Phase 1 recommendations on the T/T and PPSAI policy recommendations and related draft materials that were in progress for the PPSAI recommendations, as well as potential changes to address these impacts, which are summarized below under each set of policy recommendations reviewed. Impacts may include issues such as outdated draft provision language (e.g., references to administrative contact requirements), or the relevance or inconsistency of an existing policy recommendation with the new Registration Data Policy.

This draft report is being presented and reviewed with the EPDP Phase 1 Implementation Review Team currently working with the ICANN organization on implementation of the Phase 1 policy recommendations, for completeness and validation of the proposed paths for the items included in this report.

The initial Recommendation 27 work plan contemplated a triage step in which each of the items identified would be allocated to a Generic Names Supporting Organization (GNSO) process, an implementation or procedural update proposed by ICANN org, or a procedure to address contractual matters. Similar to the Wave 1 report, the majority of Wave 1.5 items also appear to be within the remit of the GNSO. Each of the items in this report relates to an approved consensus policy recommendation relating to gTLDs that is currently going through implementation and is expected to contain detailed requirements that impact contracted parties. As a result, ICANN org is presenting the results of this analysis as a separate report to give the

community an opportunity to review and provide input on the impacted areas identified herein and the suggested paths forward.

1 Introduction

The EPDP [team](#) on the [Temporary Specification for gTLD Registration Data](#) delivered its [Phase 1](#) recommendations in February 2019, and 27 of the 29 recommendations contained within the Report were adopted by the ICANN Board in May 2019. In parallel with the EPDP Team's Phase 2 policy development work, ICANN org has continued to work with the Implementation Review Team (IRT) to draft the new consensus policy (the Registration Data Policy) based on Phase 1 policy recommendations.

As a number of existing policies and procedures touch on registration data, it is expected that many of these will be impacted by the recommendations being implemented. The EPDP team's Recommendation 27 specified an initial list of impacted policies with potential anticipated modifications based on these impacts. Consistent with Recommendation 27, the Board directed ICANN org to work with the IRT to examine and report on the extent to which the EPDP Team's policy recommendations require modification of existing consensus policies.

During the ICANN65 meeting in June 2019, ICANN org facilitated the first face-to-face [meeting](#) of the IRT and discussed the stages of the Registration Data Policy implementation as well as the implementation process for the recommendations. In addition, the GNSO co-sponsored, with other interested community groups, a cross-community [session](#) on the impacts of the new EPDP Phase 1 recommendations on other existing ICANN policies and procedures. A preliminary list of impacted policies and procedures was shared at this session, where the community engaged in a substantive discussion on issues such as expected impacts on various existing policies and procedures, and how to prioritize the review of such policies and procedures.

As part of the planning for the implementation of the EPDP Phase 1 recommendations, ICANN org also prepared a draft work plan to address Recommendation 27, which was shared with the GNSO Council and the IRT in August 2019. At the GNSO Council meeting in September 2019, ICANN org provided an update to the Council on the plan and status of its work to date on this recommendation. The work to identify and categorize the impacted items is planned to occur in

three parts: 1) Inventory, 2) Review, and 3) Triage. This report is an output of the inventory work; the following stages are described in section 4, Next Steps, below.

ICANN org has performed a detailed review of each set of policy recommendations, and identified the impacted areas included in this report. The Wave 1 report, which includes consensus policies in effect, was delivered to the GNSO Council on 18 February 2020, while Wave 1.5 is focused on consensus policies that were in the process of being implemented. The follow-up to this report, Wave 2, will cover the relevant (non-policy) procedures. This draft report is being presented and reviewed with the IRT for completeness and validation of the proposed paths for each item.

2   Report Structure and Methodology

This report provides an analysis of the impacted areas identified as well as potential changes to address the impact, which are summarized below under each set of policy recommendations reviewed. Each of these also contains a brief summary of the policy recommendations and the key findings of ICANN org's review. Impacts may include issues such as outdated draft provision language (e.g., references to administrative contact requirements), or the relevance or inconsistency of an existing T/T or PPSAI policy recommendation with the new Registration Data Policy.

Throughout the time period of this analysis, ICANN org has worked with the IRT to draft policy language based on the EPDP's Phase 1 policy recommendations. This working draft is expected to become an implemented policy, the "Registration Data Policy." Where the term "Registration Data Policy" is used throughout this analysis, this refers to the policy recommendations as reflected in the policy language draft in progress. Because this draft is dynamic, however, it may be helpful to review and confirm the conclusions in this report to identify any updates at the time a complete policy draft is available.

Recommendation 27 anticipated updates to policies and procedures affected by the new Registration Data Policy. While the Wave 1 report was focused on consensus policies currently in effect, the items being reviewed in Wave 1.5 are approved consensus policy

recommendations that were in the process of being implemented. The Wave 2 report will cover the identified impacts on relevant (non-policy) procedures.

It is also noted that the EPDP Phase 2 Final Report was submitted to the GNSO Council on 31 July 2020 and approved by the GNSO Council on 24 September 2020, and that policy recommendations resulting from this work, if and when adopted by the ICANN Board, may also impact existing procedures. Analysis of such impacts, where relevant, would follow from issuance of the Phase 2 recommendations and are outside the scope of this report. However, given that some of the matters considered by the EPDP Phase 2 Team are central to the implementation of the PPSAI recommendations, this analysis takes into account the impact of the relevant draft EPDP Phase 2 recommendations on some areas of the PPSAI recommendations.

3 Analysis

ICANN org has attempted to be as comprehensive as possible in its analysis. As was done in Wave 1, a cross-functional team reviewed each of these procedures in detail and sought additional subject matter expertise or clarification from within the organization where needed.

The scope of the review to support the EPDP's Recommendation 27 is to identify the impact of the policy recommendations rather than identifying questions or changes in other areas. Thus, if the policy recommendations are silent on an item, no changes are proposed.
It is also important to note that the EPDP Phase 2 Team has recently completed its policy development work in accordance with its charter. The EPDP Phase 1 recommendation for provision of full data of the proxy or privacy service provider is limited to "affiliated" providers, i.e., those affiliated with an ICANN-accredited registrar.

Based on the EPDP Phase 2 Recommendation 19 regarding privacy/proxy registrations, the requirements would apply to any affiliated and/or accredited proxy or privacy service provider. Accordingly, once ICANN org has implemented a privacy/proxy service accreditation program, the Phase 2 recommendation, if adopted, would effectively replace or otherwise supersede the EPDP Phase 1 recommendation.

3.1   Privacy and Proxy Services Accreditation

Summary: Per the 2013 Registrar Accreditation Agreement (RAA), a "Privacy Service" is a service by which a Registered Name is registered to its beneficial user as the Registered Name Holder, but for which alternative, reliable contact information is provided by the P/P Provider for display of the Registered Name Holder's contact information in the Registration Data Service (Whois) or equivalent services. A "Proxy Service" is a service through which a Registered Name Holder licenses use of a Registered Name to the P/P Customer in order to provide the P/P Customer use of the domain name, and the Registered Name Holder's contact information is displayed in the Registration Data Service (Whois) or equivalent services rather than the P/P Customer's contact information.

The 2013 Registrar Accreditation Agreement (RAA) contains a specification on Privacy and Proxy Registrations that governs registrars' obligations with respect to privacy and proxy services. Per the 2013 RAA, registrars agree to comply with the terms of the Specification on Privacy and Proxy Registrations until such time as the Privacy and Proxy Accreditation Program is established or the Specification expires, whichever is earlier. The expiration date of the Specification on Privacy and Proxy Registrations is currently 31 January 2021. The Privacy and Proxy Accreditation Program under development, as recommended by the PPSAI PDP Working Group, would require all entities that offer privacy and/or proxy services to apply for and obtain accreditation by ICANN in order to continue offering those services after the accreditation program is launched.

The PPSAI Working Group's Final Report and recommendations make clear that the policy goal is to complement, not contradict or supersede, ICANN's registry and registrar contracts as they may be amended in the future (including any new consensus policies that may be developed in relation to WHOIS).

However, in light of the clear overlaps between the EPDP Team's work and the PPSAI recommendations, ICANN org previously determined, in consultation with the GNSO Council, to pause the implementation of the PPSAI recommendations.[1] As such, implementation of the Proxy and Privacy Services Accreditation Program has been on hold since late 2018.

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[1] On pausing the implementation of the PPSAI recommendations, ICANN org wrote to the GNSO Council leadership, requesting feedback on any additional steps the Council believed ICANN Org should take with

Estimated Impact: High

Key Points: PPSAI is substantively impacted by the new Registration Data Policy requirements, indicating a need for significant changes in the proposed implementation of PPSAI that take into account contracted party requirements for the processing of non-public gTLD registration data. The GNSO may also wish to undertake policy work to consider and provide guidance about the interplay between the Registration Data Policy requirements and the PPSAI recommendations, and whether updates to the PPSAI recommendations are needed.

Analysis:

As ICANN org and the community had advanced on the work toward implementation of the PPSAI recommendations, the analysis in the following sections is organized according to: 1) impact on the policy recommendations and 2) impact on the implementation materials developed to date (Accreditation Policy, Accreditation Agreement, Suspension Procedure).

3.1.1 Policy Recommendations

1. The definitions for "Affiliate", "Customer Data", "Privacy Service", and "Proxy Service" that are in the PPSAI Working Group's Final Report as well as the draft Registration Data Policy definition for "Registration Data" are consistent for these processes and ICANN org does not foresee additional efforts needed to harmonize them.

2. EPDP Phase 1 and PPSAI recommendations around labeling of proxy and privacy service registrations appear to be generally consistent in the objective of a clear and standardized form of flagging such registrations. Specifically, the PPSAI Final Report, Recommendation 4, specifies that "To the extent feasible, domain name registrations

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respect to the PPSAI IRT in light of the EPDP. See 4 March 2019 message to the GNSO at https://www.icann.org/en/system/files/correspondence/namazi-to-drazek-et-al-04mar19-en.pdf.
Given the divergent views among GNSO Councilors and considering the respective roles of ICANN Org in leading implementation work of consensus policy recommendations and the PPSAI IRT in overseeing the implementation work, the GNSO Council deferred to ICANN org in a 30 April 2019 message. See reply at https://www.icann.org/en/system/files/correspondence/drazek-et-al-to-namazi-30apr19-en.pdf.
In its response, ICANN org confirmed that implementation work would remain paused pending the resolution of EPDP Phase 2. See 5 September 2019 message to the GNSO at https://www.icann.org/en/system/files/correspondence/namazi-to-drazek-et-al-05sep19-en.pdf.

involving P/P service providers should be clearly labelled as such in WHOIS."[2] EPDP Phase 1 Recommendation 14 concerning the provision of full data of the proxy or privacy service provider is limited to "affiliated" providers, i.e., those affiliated with an ICANN-accredited registrar. As such, the Registration Data Policy specifies that "For Registered Names using an Affiliated Privacy or Proxy Service, Registrar and Registry Operator MUST Publish the full Registration Data of the Privacy or Proxy Service, which may also include the existing privacy or proxy pseudonymized email." The Phase 1 recommendation for publication of full data for privacy/proxy services affiliated with a registrar (estimated to be most if not all of the existing proxy privacy services) could be implemented along with the flag/labeling requirement, and the requirements for unaffiliated providers (if any) could be implemented at a later stage.

3. To implement the PPSAI recommendations, it will also be necessary to enter into data protection arrangements that will govern the required processing of Customer Data. This will include identifying the legal bases and controller(s) for each processing operation that will be required under the PPSAI requirements as well as the appropriate safeguards that must be applied to Customer Data, including cross-border transfer safeguards, where applicable. These issues (in the context of Registration Data) are under active consideration by ICANN org and stakeholders pursuant to implementation of the EPDP Phase 1 recommendations. ICANN and the contracted parties are negotiating data protection terms that will account for required processing of non-public data to the registry and third-party requestors. The processing that will be required of privacy and proxy service providers pursuant to the PPSAI recommendations will involve the same types of contact data, will be performed for purposes that are similar or identical to the purposes for processing Registration Data, and will involve many of the same entities.

4. PPSAI Final Report, Recommendation 5, specifies that "P/P customer data is to be validated and verified in a manner consistent with the requirements outlined in the WHOIS Accuracy Program Specification of the 2013 RAA (as may be updated from time to time). Moreover, in the cases where a P/P service provider is Affiliated with a registrar and that Affiliated registrar has carried out validation and verification of the P/P customer

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[2] In the PPSAI implementation work to date, the IRT advised that ICANN org should implement this requirement using existing WHOIS fields.

data, re-verification by the P/P service provider of the same, identical, information should not be required."

EPDP Phase 1, Recommendation 4, states that "requirements related to the accuracy of registration data under the current ICANN contracts and consensus policies "shall not be affected by this policy." Per RAA section 1(a) of the Whois Accuracy Program Specification, registrars are required to validate the presence of data for all fields under subsection 3.3.1 of the RAA in a proper format for the applicable country or territory. Section 3.3.1.6 referenced in subsection 3.3.1 specifies the name and postal address of the registered name holder while sections 3.3.1.7 and 3.3.1.8 reference the administrative and technical contact details. Under the draft Registration Data Policy, requirements in section 3.3.1.6 have been updated to include the email address, voice telephone number, and fax number for the registered name holder; requirements in section 3.3.1.7 have been updated to exclude the postal address and fax number of the technical contact and the administrative contact details, which are referenced in section 3.3.1.8 and will no longer be required. As such, the data elements listed in sections 3.3.1.6, 3.3.1.7, and 3.3.1.8 have been superseded by data elements in the Registration Data Policy. Future updates to the WHOIS Accuracy Program Specification as well as referencing the correct set of data elements to be validated and verified by privacy and proxy service providers should be considered as part of the implementation of PPSAI and appropriately applied to the P/P accreditation program.

5. The PPSAI recommendations identified Disclosure, Publication, and Relay mechanisms for enabling communication with and/or identification of a privacy or proxy service customer:

- **Disclosure**: the reveal of a person's (i.e. the licensee or beneficial owner of a registered domain name) identity/contact details to a third-party Requester without Publication in the WHOIS system;
- **Publication**: the reveal of a person's (i.e. the licensee or beneficial owner of a registered domain name) identity/contact details in the WHOIS system; and
- **Relay**: to forward the request to, or otherwise notify, the privacy or proxy service customer that a Requester is attempting to contact the customer.

The PPSAI's concept of "Reveal" of Customer Data is comparable to the EPDP's concept of disclosure of non-public Registration Data. The PPSAI's requirements for Reveal were limited. PPSAI Recommendations 7 and 8 simply required that privacy and proxy service providers publish their criteria for requests for Customer Data and the specific grounds under which Customer Data may be disclosed to a third party. Similar to PPSAI, the EPDP Phase 1 recommendations included criteria for Reasonable Requests for Lawful Disclosure of Non-Public Registration Data, but did not mandate how the registrar should reach its decision about whether to disclose requested non-public data. While there is currently no impact, adopting language similar to that used in the Registration Data Policy regarding disclosure and publication of non-public registration data may also be considered as part of the implementation.

6. PPSAI Final Report, Recommendation 8 specifies the minimum elements that providers should include in their terms of service in relation to Disclosure and Publication, such as the "the "specific grounds upon which a customer's details may be Disclosed or Published or service suspended or terminated, including Publication in the event of a customer's initiation of a transfer of the underlying domain name." PPSAI Final Report, Recommendation 9 provides best practices for accredited P/P service providers, such as "using commercially reasonable efforts to avoid the need to disclose underlying customer data in the process of renewing, transferring or restoring a domain name." It is important to note that when a privacy or proxy service is suspended or terminated, there is a risk that a customer's personally identifiable information is made public or is treated as other non-proxy or privacy registrations would be. As part of the PPSAI implementation, it may be beneficial to consider adhering to the Registration Data Policy provision concerning reasonable requests for lawful disclosure of non-public registration data, rather than the policy recommendation language in the PPSAI Final Report. PPSAI Recommendation 9 also notes that "P/P service providers should facilitate and not obstruct the transfer, renewal or restoration of a domain name by their customers, including without limitation a renewal during a Redemption Grace Period under the Expired Registration Recovery Policy (ERRP) and transfers to another registrar." Impacts identified for the ERRP as part of the EPDP team's Recommendation 27 Wave 1 review should also be considered during implementation of PPSAI recommendations. With regard to addressing the impacted policies identified in the Wave 1 analysis, the GNSO Council considered possible next steps and determined that for those items that

require updates, such terminology, as well as possible interim solutions, redlines of the affected policies are to be prepared by ICANN org and reviewed by the EPDP Phase IRT before publishing the draft revisions for public comment.

7. PPSAI Final Report, Recommendation 15, specifies that "A uniform set of minimum mandatory criteria that must be followed for the purpose of reporting abuse and submitting requests (including requests for the Disclosure of customer information) should be developed. Forms that may be required by individual P/P service providers for this purpose should also include space for free form text. P/P service providers should also have the ability to "categorize" reports received, in order to facilitate responsiveness. P/P service providers must also state the applicable jurisdiction in which disputes (including any arising under the Illustrative Disclosure Framework in Annex B) should be resolved on any forms used for reporting and requesting purposes." As part of the implementation, it may be beneficial to consider harmonizing these requirements with the Registration Data Policy provisions concerning reasonable requests for lawful disclosure of non-public registration data, which specify the required format and content of requests, the Registrar's or Registry Operator's means of providing a response to the requestor, and the anticipated timeline for responses.

8. PPSAI Final Report, Recommendations 19 and 20, propose an Illustrative Disclosure Framework applicable to Intellectual Property Rightsholder requests, which contains detailed requirements for data requests submitted from intellectual property holders. This framework is designed for handling requests for Customer Data to a proxy or privacy service provider. The EPDP Phase 1 and 2 (SSAD) recommendations do not specifically address requests for proxy or privacy service Customer Data, but do provide general guidance on the content for requests for non-public Registration Data. The EPDP recommendations are less detailed, but all sets of requirements are generally consistent, with some overlaps discussed in section 3.1.5 below. It is also important to note that the disclosure framework set out in the PPSAI recommendations serves the same purpose as the standardized access model for gTLD registration data that was discussed as part of the EPDP Phase 2 work. As such, ICANN org has identified a need for the GNSO Council to consider and provide clarity on whether the PPSAI and EPDP Team's efforts should be harmonized instead of building two separate processes for

essentially the same action: requesting non-public directory information about the registrant or beneficial user of a domain name.

9. Both the PPSAI and the EPDP recommendations contemplate requirements for a recipient (i.e., contracted party or proxy/privacy service provider) to respond to a request for disclosure of non-public data, including special requirements for requests defined as urgent or high priority. The PPSAI policy recommendations did not specify response time requirements for disclosure requests and contain no requirements for providers on acknowledgement of requests and urgent requests. In regard to the substantive response to a disclosure request, the Illustrative IP Disclosure Framework specifies that the service provider notifies the customer of the request with a period of 15 days to respond. The provider then responds to the requestor within 5 days of the customer response or 2 days after the 15-day period has passed. The EPDP Phase 1 team recommended a process for "Reasonable Requests for Lawful Disclosure." The recommendations, which were incorporated into the Registration Data Policy, included a required response time for the contracted party to acknowledge receipt of a request no more than 2 business days from receipt (absent exceptional circumstances). The EPDP Phase 1 team also recommended that contracted parties provide a substantive response to the disclosure request "without undue delay, but within a maximum of 30 days" (absent exceptional circumstances). The Team recommended that a separate timeline for urgent reasonable disclosure requests should be established according to criteria set during implementation. In the current Registration Data Policy draft under discussion with the IRT, the required response time is 24 hours.

10. PPSAI Final Report, Recommendations 12, specifies that "P/P service providers should be fully contactable, through the publication of contact details on their websites in a manner modelled after Section 2.3 of the 2013 RAA Specification on Privacy and Proxy Registrations, as may be updated from time to time." Under the Registration Data Policy, "For domain registrations using an Affiliated Privacy/Proxy Service, Registrar and Registry Operator MUST Publish the full non-personal Registration Data of the Privacy/Proxy Service, which MAY also include the existing privacy or proxy pseudonymized email." While the PPSAI recommendation is not in conflict with the Registration Data Policy, as part of the implementation of the PPSAI recommendations, it may be beneficial to consider both requiring the publication of the provider's contact

details on each privacy and proxy service provider's website as well as in the RDDS output.

3.1.2 Accreditation Policy Draft

1. The Privacy & Proxy Services Accreditation Policy draft contains proposed requirements concerning the accreditation of Privacy and Proxy Service Providers in gTLDs.

2. The PPSAI WG recommended that "Registrars are not to knowingly accept registrations from privacy or proxy service providers who are not accredited through the process developed by ICANN." The PPSAI recommendations were not specific in terms of what the working group envisioned the scope of "accreditation" to be, but the PPSAI IRT analogized the concept to registrar accreditation. It may be prudent to revisit this approach in light of the changes in standards and procedures for access to registration data in light of the GDPR and subsequent policy work by the ICANN community. For example, linking the request and disclosure processes together for all nonpublic registration data (both privacy/proxy-protected and non-privacy/proxy-protected) could potentially result in an ability to develop an "accreditation" program for privacy and proxy services that has less overhead than that required for registrar accreditation.

3. Accreditation Policy draft section 3 includes definitions of terms used. As part of the PPSAI implementation, it may be useful to consider updating this section to include the terms and definitions for "Registration Data Directory Services" and "Registration Data". Accreditation Policy draft section 4.3 specifies that "If a Registrar becomes aware that one or more registrations made through the Registrar involves an unaccredited provider or was initially registered when the Service Provider's accreditation was on suspended status, the Registrar MUST treat the information listed in WHOIS as inaccurate, such that requirements of the 2013 Registrar Accreditation Agreement's WHOIS Accuracy Program Specification apply." As mentioned above, the WHOIS Accuracy Program Specification is impacted by the EPDP Phase 1 policy recommendations. Specifically, RAA section 1(a) of the Whois Accuracy Program Specification requires registrars to validate the presence of data for all fields required under subsection 3.3.1, which have been superseded by data elements in the Registration Data Policy. Accreditation Policy draft section 4.3, however, specifies only the steps regarding how a registrar should treat such data but not the data elements listed. Impacts of the new Registration Data Policy

on the Whois Accuracy Program Specification are being considered separately as part of the Wave 2 analysis and will be included in the follow-up to this report.

4. In addition to the specific points mentioned in the sections above, if proceeding with the implementation of the PPSAI policy recommendations, it may be beneficial to revisit the entire Accreditation Policy draft in light of the changes in standards and procedures for access to registration data to ensure it is GDPR-compliant.

3.1.3 Accreditation Agreement Draft

1. The PPSAI IRT advised ICANN org that the intention of the PPSAI recommendations was for ICANN org to enter into accreditation agreements with each privacy and proxy service provider. This model has the benefit of enabling any entity to obtain accreditation without an affiliation with a registrar, but has the downside of being the most burdensome to operationalize. Given the changes that have occurred with respect to WHOIS since the PPSAI recommendations were adopted, it may be prudent for the community to consider how it envisions the structure of its recommended accreditation program for privacy and proxy service providers to function against the backdrop of the EPDP Team's Phase 1 and Phase 2 recommendation.

2. The draft Privacy & Proxy Service Provider Accreditation Agreement (PPAA) would be between ICANN and each accredited privacy and proxy service provider.

3. PPAA draft section 3.2 specifies the requirements for retention of customer and registration data. Under the draft Registration Data Policy, "Registrars MUST retain all data collected or generated pursuant to Section [7] of this Registration Data Policy for a period of no less than fifteen (15) months following the Registrar's sponsorship of the registration." To align with the retention requirements specified in the Registration Data Policy, updates to section 3.2 of the PPAA may be considered as part of the implementation of the PPSAI policy recommendations.

4. PPAA draft section 3.3 specifies rights in the data elements listed in subsections 3.3.1 through 3.3.4, which reference administrative and technical contact data for the registered name holder. This section is modelled after some of the fields required under subsection 3.3.1 of the RAA, which have been superseded by data elements in the draft

Registration Data Policy. To align with the draft Registration Data Policy, updates to section 3.3 of the PPAA may be considered as part of the implementation of the PPSAI policy recommendations. Namely, requirements in subsection 3.3.1 of the PPAA may be updated to include the email address, voice telephone number, and fax number of the registered name holder. Requirements in subsection 3.3.2 may be updated to remove the postal address and fax number of the technical contact and the collection of the name, voice telephone number, and e-mail address should be made optional. Subsection 3.3.3 of the PPAA, which references the administrative contact data, may be removed as they will no longer be required to be collected or transferred under the draft Registration Data Policy.

5. PPAA draft section 3.4 provides requirements for escrow of customer data, which were developed pre-GDPR. While there is currently no impact, the data protection terms concerning data escrow processing that will be required of privacy and proxy service providers pursuant to the PPSAI recommendations should be informed by the arrangements entered into during the implementation of the EPDP Phase 1 and Phase 2 recommendations.

6. PPAA draft section 3.5 specifies business dealings, including with customers, and attempts to take applicable data protection laws into account. If proceeding with a PPSAI implementation that includes this draft agreement, it may be prudent to revisit this section in light of the changes in standards and procedures for access to registration data to ensure it is GDPR-compliant.

7. PPAA draft section 3.12 specifies the provider's abuse contact and duty to investigate reports of abuse. ICANN org did not identify any anticipated impacts of the Registration Data Policy on this section.

8. PPAA draft sections 3.13 and 3.14 require providers to comply with the Law Enforcement Authority Disclosure Framework Specification outlined in Specification 3 of the draft PPAA and the Intellectual Property Disclosure Framework Specification outlined in Specification 4 of the draft PPAA. In addition, PPAA draft section 3.17 requires providers to comply with the requirements for Reveal set forth in the framework specifications regarding disclosure or publication request from a requester. The

disclosure framework in the PPAA serves the same purpose as the Standardized System for Access and Disclosure (SSAD) model for gTLD registration data that is being proposed as part of the EPDP Phase 2 work. Additional input is requested from the GNSO on whether PPAA requirements should be harmonized with the outcome of the EPDP Phase 2.

9. PPAA draft section 3.15 requires providers to ensure that the provider's full legal name, ICANN identifier and the URL for the ICANN-managed webpage containing Provider's contact information are displayed in the Registration Data Directory Service records for all registrations utilizing Provider's Services, at a minimum, in the Registrant Organization field, in the following format: Registrant Organization:
    - Provider Name,
    - ICANN ID,
    - ICANN URL for Provider's contact information [*unique address to be created for and provided to Provider upon accreditation*].

    In the PPSAI implementation work to date, the IRT advised against making any modifications to the WHOIS output or format (for example, to require a new field or flag in a WHOIS record). Instead, the PPSAI IRT advised that ICANN org should implement this requirement using existing WHOIS fields. To that end, ICANN org proposed a solution that would require accredited privacy and proxy service providers to include the required label in the "registrant organization" field. The label would include the privacy or proxy service provider name and accreditation ID (structure TBD). However, per EPDP Phase 1 Recommendation 12, "the Organization field will be published if that publication is acknowledged or confirmed by the registrant via a process that can be determined by each registrar. If the registered name holder does not confirm the publication, the Organization field can be redacted or the field contents deleted at the option of the registrar." As such, similar language is also included in the draft Registration Data Policy. In the case of proxy registrations, consent to publish the value of the Registrant Organization data element would be provided by the proxy service provider on behalf of the Registered Name Holder, however, for domain name registrations involving a privacy service, consent would be provided by the Registered Name Holder, which may result in inconsistent display of the P/P label in the Registrant Organization field. In light of changes to the required data fields for display following adoption of the Temporary Specification for gTLD Registration Data and the expected new requirements for the

Registrant Organization field contained in the Registration Data Policy (Phase 1 EPDP), the previously proposed solution may no longer work and will need to be revisited.

10. PPAA draft specification 1 outlines the requirements for the customer data accuracy program developed by ICANN and the Working Group during the term of the PPAA. EPDP Phase 1, Recommendation 4 states that requirements related to the accuracy of registration data under the current ICANN contracts and consensus policies "shall not be affected by this policy." The EPDP Phase 2 team has not addressed this specific issue further. As such, the GNSO may wish to consider PPAA Policy requirements on data accuracy if additional policy work is pursued by the GNSO.

11. PPAA draft specification 5 outlines the requirements for retention of customer information and the data elements required to be retained under the PPAA, including Administrative and Technical contact data. Under the Registration Data Policy, certain data elements would not be included, such as the postal address and fax number of the technical contact and the collection of the name, voice telephone number, and e-mail address of the technical contact would be made optional. In addition, administrative contact data will no longer be required to be collected or transferred. As such, Specification 5 of the PPAA may be updated with the retention requirements specified in the draft Registration Data Policy.

12. In addition to the specific points mentioned in the sections above, if proceeding with the implementation of the PPSAI policy recommendations, it may be beneficial to revisit the entire Accreditation Agreement draft in light of the changes in standards and procedures for access to registration data to ensure it is GDPR-compliant.

3.1.4 Suspension, De-Accreditation and Transition Procedure Draft

1. In consultation with the PPSAI IRT, the ICANN organization developed this procedure for managing notifications to customers who have registered gTLD domain names using an accredited privacy or proxy service provider that is being suspended or de-accredited, either voluntarily or involuntarily. This procedure is intended to enhance protection of registrants and customers of privacy and/or proxy services.

2. ICANN org did not identify any anticipated impacts of the Registration Data Policy on the draft Suspension, De-Accreditation and Transition Procedure.

3.1.5 EPDP Phase 2 Considerations and Overlaps

1. As mentioned, policy recommendations resulting from Phase 2 of the EPDP, if and when adopted by the ICANN Board, may also impact PPSAI recommendations. Analysis of such impacts are outside the scope of this report; however, many of the matters considered by the EPDP Team Phase 2 are central to the implementation of the PPSAI recommendations. As such, ICANN org has also performed a review of the policy recommendations of the EPDP Phase 2 and has identified overlaps between PPSAI implementation and the EPDP Team's Phase 2 efforts that may be considered in determining next steps. These are being shared in this section of the report for informational purposes.

2. The EPDP Phase 1 recommendation for provision of full data of the proxy or privacy service provider is limited to "affiliated" providers, i.e., those affiliated with an ICANN-accredited registrar. The EPDP Phase 2, Recommendation 19, states that "In the case of a domain name registration where an affiliated and/or accredited privacy/proxy service is used, e.g., where data associated with a natural person is masked, Registrar (and Registry, where applicable) MUST include the full RDDS data of the applicable privacy/proxy service in response to an RDDS query. The full privacy/proxy RDDS data may also include a pseudonymized email." As such, the EPDP Phase 2 recommendation would apply to any affiliated and/or accredited proxy or privacy service provider. Accordingly, the Phase 2 recommendation would effectively remove the necessity for the Phase 1 recommendation, as indicated in the EPDP Team's report. The EPDP Phase 2 Final Report makes clear that the intention is that domain registration data should not be both redacted and covered by a privacy or proxy service. The Phase 2 Final Report suggests that the recommendation around providing full data for a proxy or privacy service must not be implemented until the PPSAI policy clearly labelling or flagging domain registrations as privacy/proxy is implemented (see Policy Recommendations section 3.1.1 at pt. 2).

3. Both the PPSAI and the EPDP Phase 1 and 2 recommendations contemplate requirements for requesting non-public data. Although the PPSAI working group reached consensus on an illustrative Disclosure Framework for handling requests from intellectual property, the working group did not develop a framework for law enforcement authorities and other types of third-party Requesters. However, the PPSAI final report specified minimum requirements that might be developed for such a framework. The draft Law Enforcement Authorities Disclosure Framework (LEA Framework) proposed to the PPSAI IRT by the Governmental Advisory Committee's Public Safety Working Group contains detailed proposed requirements for requesting data. All sets of requirements for data requests from PPSAI (IP), PPSAI (LEA), EPDP Phase 1, and EPDP Phase 2 are generally consistent, with some overlaps as follows:

All requests for disclosure of data must contain:
- Contact information of the requestor
- Attestation that the information provided is true and correct

IP/LEA Disclosure Frameworks, SSAD
- Domain name
- Request type

LEA Disclosure Framework, EPDP (Ph1), SSAD
- List of data elements requested by the requestor

EPDP (Ph1) & SSAD
- Nature/type of business entity or individual, and Power of Attorney statements, where applicable and relevant
- Information about the legal rights of the requestor and specific rationale and basis for the request
- Agreement by the requestor to process lawfully any data elements received in response to the request

IP/LEA Disclosure Frameworks
- Evidence/statement of attempt to contact relevant parties
- Authorized legal contact for copyright/trademark holder

- Trademark/Copyright Information

LEA Disclosure Framework
- Instructions for identity verification
- Instructions regarding timeline requirements for customer notification
- Deciding authority (e.g. prosecutor, judge, police authority) behind the request and source of legal authority for request
- Priority Level, including detail about threat type and justification for Priority Level, and/or suggested deadline for response. For High Priority requests, the Requestor must also provide specific information demonstrating that the request is High Priority due to an imminent threat

SSAD
- Accreditation status
- Request type

IP Disclosure Framework for Copyright
- Requesters are encouraged to provide evidence of previous attempts to contact the web host or the domain name registrar with regard to the subject matter of the request

Taking these as a superset, requests for disclosure of data would be required to contain:

- Domain name *(IP/LEA Disclosure Frameworks, SSAD)*
- Contact information of the requestor
- Instructions for identity verification **(LEA Disclosure Framework)**
- Accreditation status **(SSAD)**
- Nature/type of business entity or individual, and Power of Attorney statements, where applicable and relevant **(EPDP & SSAD)**
- Evidence/statement of attempt to contact relevant parties **(IP/LEA Disclosure Frameworks)**
  - **PPSAI IP Disclosure Framework for Copyright** also encourages requesters to also provide evidence of previous attempts to contact the

web host or the domain name registrar with regard to the subject matter of the request.

- Authorized legal contact for copyright/trademark holder **(IP/LEA Disclosure Frameworks)**
- Deciding authority (e.g. prosecutor, judge, police authority) behind the request and source of legal authority for request **(LEA Disclosure Framework)**
- Information about the legal rights of the requestor and specific rationale and basis for the request **(EPDP & SSAD)**
- List of data elements requested by the requestor **(LEA Disclosure Framework, EPDP, SSAD)**
- Trademark/Copyright Information **(IP/LEA Disclosure Frameworks)**
- Attestation that the information provided is true and correct
- Agreement by the requestor to process lawfully any data elements received in response to the request **(EPDP, SSAD)**
- Priority Level, including detail about threat type and justification for Priority Level, and/or suggested deadline for response. For High Priority requests, the Requestor must also provide specific information demonstrating that the request is High Priority due to an imminent threat **(LEA Framework)**
- Request type **(SSAD)**
- Instructions regarding timeline requirements for customer notification **(LEA Framework)**

Comparison: Requests for Disclosure of Data					
	PPSAI-IP *(Disclosure Framework for Trademark)*	**PPSAI-IP** *(Disclosure Framework for Copyright)*	**PPSAI-LEA**	**EPDP Phase 1**	**EPDP Phase 2**
Domain Name	The domain name that allegedly infringes the trademark	The exact URL where the allegedly infringing work or infringing activity is located, or a representative sample of where such work or activity is located	Domain name or URL involved		Domain name pertaining to the request for access/disclosure

Comparison: Requests for Disclosure of Data					
	PPSAI-IP *(Disclosure Framework for Trademark)*	**PPSAI-IP** *(Disclosure Framework for Copyright)*	**PPSAI-LEA**	**EPDP Phase 1**	**EPDP Phase 2**
Identity of Requestor	Full name, physical address, email address, and telephone number of the trademark holder, and for legal entities, the country where incorporated or organized	Full name, physical address, email address, and telephone number of the trademark holder, and for legal entities, the country where incorporated or organized	Requestor contact details, including instructions for identity verification	The contact information of the requestor, the nature/type of business entity or individual, and Power of Attorney statements, where applicable and relevant	Identification of and information about the Requestor including Identity and Signed Assertion information
Evidence/ Statement of Attempt to Contact	Evidence of previous use of a relay function to attempt to contact the Customer regarding the subject matter of the request, if any, and of any responses thereto, if any	Evidence of previous use of a relay function to attempt to contact the Customer with regard to the subject matter of the request, if any, and of any responses thereto, if any Requesters are also encouraged (but not required under this Policy) to provide evidence of previous attempts to contact the web host or the domain name registrar with	A clear statement that the LEA has attempted to contact the relevant parties and has no other means of identifying them		

	PPSAI-IP *(Disclosure Framework for Trademark)*	PPSAI-IP *(Disclosure Framework for Copyright)*	PPSAI-LEA	EPDP Phase 1	EPDP Phase 2
Comparison: Requests for Disclosure of Data					
		regard to the subject matter of the request, if any, and of any responses thereto, if any			
Legal Contact/ Rights	Authorized legal contact for trademark holder and his/her name, title, law firm, if outside counsel, physical address, email address and telephone number for contact purposes	Authorized legal contact for the copyright holder and his/her name, law firm, if outside counsel, physical address, email address and telephone number for contact purposes	Deciding authority (e.g. prosecutor, judge, police authority) behind the request and source of legal authority for request	Information about the legal rights of the requestor and specific rationale and basis for the request	Information about the legal rights of the Requestor specific to the request and legitimate interest or other lawful basis and/or justification for the request, (e.g., What is the legitimate interest or other lawful basis; Why is it necessary for the Requestor to ask for this data?)
Data Elements Requested			Details of Requested Information	A list of data elements requested by the requestor	A list of data elements requested by the Requestor, and why the data elements requested are necessary for the purpose of the request

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Comparison: Requests for Disclosure of Data					
	PPSAI-IP *(Disclosure Framework for Trademark)*	**PPSAI-IP** *(Disclosure Framework for Copyright)*	**PPSAI-LEA**	**EPDP Phase 1**	**EPDP Phase 2**
Trademark/ Copyright Information	-The trademark registration number (if applicable)

- Links to the national trademark register where the mark is registered (or a representative sample of such registers in the case of an internationally registered mark), showing that the registration is currently in force (if applicable)

- The date of first use and/or of application and registration of the mark

- The trademark | - The copyright registration number (if applicable)

- If possible, the exact URL where the original content is located (if online content) or where the claim can be verified

- The country where the copyright is registered (if applicable) | | | |
| **Good Faith Statement** | A good faith statement, either under penalty of perjury or notarized or accompanied by sworn statement ("Versicherung an Eides statt"), | A good faith statement, either under penalty of perjury or notarized or accompanied by sworn statement ("Versicherung an Eides | A verification statement (e.g. all provided information is true and correct)

A clear statement that the domain name or URL | An affirmation that the request is being made in good faith Agreement by the requestor to process lawfully any | Affirmation that the request is being made in good faith and that data received (if any) will be processed lawfully and only in |

	PPSAI-IP *(Disclosure Framework for Trademark)*	**PPSAI-IP** *(Disclosure Framework for Copyright)*	**PPSAI-LEA**	**EPDP Phase 1**	**EPDP Phase 2**
	Comparison: Requests for Disclosure of Data				
	from either the trademark holder or an authorized representative of the trademark holder	statt"), from either the copyright holder or an authorized representative of the copyright holder	involved is part of an official investigation	data elements received in response to the request	accordance with the justification specified above
Priority Level/ Request Type			Priority Level, including detail about threat type and justification for Priority Level, and/or suggested deadline for response;

For High Priority requests, the Requestor must also provide specific information demonstrating that the request is High Priority due to an imminent threat | | Request type (e.g. Urgent – Priority 1, ICANN Administrative proceedings – Priority 2, All other requests – Priority 3, Confidential) |
| **Timeline Reqs.** | | | Instructions regarding timeline requirements for Customer notification | | |

There are also some key differences:

- The IP and LEA Frameworks require the requestor to indicate what steps it has already taken to contact the relevant parties.
- The EPDP Phase 2 recommendations contemplate tailoring of data requests to be as narrow as possible for the given purpose. Thus a request would not need to be a blanket request for all available registration data, but only the data elements needed per the purpose of the request.

It should be noted that intellectual property holders and law enforcement authorities are two of the key expected user groups for the SSAD being proposed by the EPDP Phase 2. The frameworks used in the PPSAI policy recommendations and implementation discussions can provide guidance for these types of requests in the SSAD. The EPDP Phase 2 recommendations for an SSAD also incorporate a completeness check that all required fields have been filled out, but not whether responses are accurate, whereby a request that did not contain all of the required information would not proceed for consideration of disclosure.

4. The recommendations from the EPDP Phase 2 Team recommend that the response time for acknowledging receipt of a data request by the Central Gateway Manager MUST be without undue delay. Further, The Central Gateway Manager MUST confirm that all required information as per Recommendation #3 (criteria and content of request) is provided. Should the Central Gateway Manager detect that the request is incomplete, the Central Gateway Manager MUST notify the Requestor that the request is incomplete, detailing which required data is missing, and provide an opportunity for the Requestor to complete its request. It must not be possible for a Requestor to submit a request that is incomplete.

The Phase 2 team anticipates that some requests will be able to be automated based on categories determined to be technically and commercially feasible and legally permissible. Per the EPDP Phase 2 Final Report, "The way automated processing of disclosure decisions is expected to work in practice is that the Central Gateway Manager would confirm the request meets the requirements for automated processing and direct the Contracted Party to automatically disclose the requested data to the Requestor. The mechanism is expected to be determined during implementation." Response targets for disclosure requests that meet the criteria for fully- automated responses are expected to

be further developed during the implementation phase, but these are expected to be under 60 seconds.

In the case of a non-automated request, as outlined in the EPDP Phase 1 Report, the contracted party would be required to respond with a disclosure decision, per the policy, "without undue delay, but within maximum of 30 days unless there are exceptional circumstances."

The Phase 2 recommendations anticipate an expedited timeline for urgent requests (Priority 1) whereby contracted parties would have 1 business day to respond, but not to exceed 3 calendar days from receipt. A comparison of the response time requirements for data requests from PPSAI (IP), PPSAI (LEA), EPDP Phase 1, and EPDP Phase 2 is below.

Comparison: Request Response Times				
	PPSAI-IP	**PPSAI-LEA**	**EPDP Phase 1**	**EPDP Phase 2**
Acknowledgement of request	n/a	Confirmation of receipt within 2 business days.	(Proposed implementation) Within 2 business days but no more than 3 calendar days from receipt.	Occurs at submission via the Central Gateway
Response to request	Provider notifies customer w/ 15 days to respond. Provider responds to requestor within 5 days of customer response or 2 days after the 15-day period has passed.	Provider should seek to action in accordance with the deadline identified in the request. If Provider cannot adhere to such deadline, Provider should notify the LEA Requestor and provide a reasonable timeframe for response.	Contracted party responds within 30 calendar days from receipt.	Contracted party responds within maximum 2 business days of receipt for Priority 2 requests, and for all other requests (Priority 3), the response time will be 5 business days during Phase 1 implementation and 10 business days during Phase 2 implementation

Comparison: Request Response Times				
	PPSAI-IP	**PPSAI-LEA**	**EPDP Phase 1**	**EPDP Phase 2**
Response to urgent/high priority request	n/a	Proposed within 24 hours of receipt, no agreement within PPSAI IRT	(proposed) Contracted party responds within 24 hours of receipt	Contracted party responds within 1 business day, not to exceed 3 calendar days of receipt

5. The recommendations from EPDP Phase 2 include detailed requirements for how a contracted party decides whether to disclose data, what data must be disclosed, and how the data must be disclosed. This is expected to include requirements for the application of a balancing test that will take into account the relative interests of the requestors and the registrants. The policy recommendations and implementation of those recommendations could inform the implementation of PPSAI, because it is expected that in many cases providers will need to conduct the same type of balancing in determining whether or not to disclose data in response to a request. A comparison of the requirements concerning evaluation of requests for access from PPSAI (general), PPSAI (IP), PPSAI (LEA), EPDP Phase 1, and EPDP Phase 2 is below.

Comparison: Request Evaluation Processes					
	PPSAI	**PPSAI-IP**	**PPSAI-LEA[3]**	**EPDP Phase 1**	**EPDP Phase 2**
Steps	TBD by each provider (see Recs 7-8, 15).	1. (Optional) Requestor registration 2. Request submission 3. Confirmation of receipt 4. Customer notification 5. 15-day period for customer objection 6. Evaluation of request and	1. Request submitted to designated LEA contact. 2. Completeness check. 3. Where requestor is not known, provider to verify identity	1. Request submitted via mechanism and process posted by contracted party. 2. Acknowledgment of receipt. 3. Request evaluation. 4. Request answer (or	1. Request submitted to central gateway. 2. Acknowledgment of receipt. 3. Completeness check. 4. Gateway sends request to contracted party. 5. Contracted party

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[3] Criteria as proposed by Governmental Advisory Committee to PPSAI IRT. IRT considered but had not reached consensus on proposed requirements. Response timeframe was disputed by various IRT members.

	Comparison: Request Evaluation Processes				
	PPSAI	**PPSAI-IP**	**PPSAI-LEA**[3]	**EPDP Phase 1**	**EPDP Phase 2**
		customer response (if any) 7. Reply to requestor with data or reason for denial.	4. Provider response to requestor.	explanation for denial).	threshold determination (no review of underlying data): has requestor provided legal basis, are data elements necessary for stated purpose, etc? 6. If failure at threshold level, contracted party may deny or request more information. 7. If threshold determination is a "pass," contracted party may review underlying data. 8. Contracted party decision and notice to requestor.
Is data subject notified of request?	Dependent on provider terms.	Yes.	Possibly, but would likely not occur in practice. This occurs in accordance with provider's terms of service and in contemplation of any request for confidentiality from	Not addressed in policy.	Yes, where required by applicable law. However, the nature of legal investigations or procedures MAY require SSAD and/or the disclosing entity to keep the nature or existence of certain requests

Comparison: Request Evaluation Processes					
	PPSAI	**PPSAI-IP**	**PPSAI-LEA**[3]	**EPDP Phase 1**	**EPDP Phase 2**
			requestor.[4] Provider must notify requestor at least 3 business days before a customer notification.		confidential from the data subject.
Evaluation criteria specified by policy?	No. Must be disclosed in terms of use.	No. Must be disclosed in terms of use.	No.	Final Report recommends that criteria be developed as part of implementation.	See Recommendation 8. Minimum substantive evaluation criteria are noted for "balancing of interests."
Is contracted party required to disclose data?	No. Processes and criteria must be disclosed in terms of use.	No. Request may be denied for reasons defined by framework or other reasons (list is non-exhaustive).	No.	No.	Not for non-automated use cases, but disclosure could be required for disclosure requests that meet the criteria established for automated processing of disclosure decisions.

3.2   Translation & Transliteration of Contact Information

Summary: The Translation and Transliteration of Contact Information policy recommendations
are focused on how to facilitate the entry and transformation (i.e. translation or transliteration) of
contact information into domain name Registration Directory Services (RDS) by users in
multiple languages and scripts.

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[4] Under the proposed framework, customer notification shall occur at earliest opportunity unless such
disclosure would pose a risk to operational sensitivity, safety of individuals, or is prohibited by law or court
order.

Estimated Impact: Low

Key Points: ICANN org has not identified any substantive impact of the Registration Data Policy on Translation & Transliteration of Contact Information.

Analysis:

1. Recommendation 1 in the Final Report on the Translation and Transliteration of Contact Information specifies that "that it is not desirable to make transformation of contact information mandatory. Any parties requiring transformation are free to do so on an ad hoc basis outside Whois or any replacement system, such as the Registration Data Access Protocol (RDAP). If not undertaken voluntarily by registrar/registry (see Recommendation #5), the burden of transformation lies with the requesting party."

2. Recommendation 4 in the Final Report on the Translation and Transliteration of Contact Information specifies that "regardless of the language(s)/script(s) used, it is assured that the data fields are consistent to standards in the Registrar Accreditation Agreement (RAA), relevant Consensus Policy, Additional Whois Information Policy (AWIP) and any other applicable policies. Entered contact information data are validated, in accordance with the aforementioned Policies and Agreements and the language/script used must be easily identifiable." As such, all translated or transliterated information will be expected to conform to the Registration Data Policy. To the extent that the policies referenced are themselves updated by the Registration Data Policy, it would be expected that the data fields would continue to be consistent with these.

3. In the Translation and Transliteration of Contact Information Working Group's Final Report, the Working Group recommended that Contact Information that has been transliterated, transcribed, or translated—i.e. "transformed"—must be easily identifiable, marked as transformed, and indicate the source of the transformation. Specifically, Recommendation 5 specifies that "if the transformation of contact information is performed, and if the Whois replacement system is capable of displaying more than one data set per registered name holder entry, these data should be presented as additional fields (in addition to the authoritative local script fields provided by the registrant) and that these fields be marked as transformed and their source(s) indicated." RFC 6497:

"Extension T: Transformed Content" defines an extension for specifying the source of content that has been transformed, including text that has been transliterated, transcribed, or translated, or in some other way influenced by the source.[5] Language tags must accompany Contact Information data fields in registration data directory services that have been translated, transliterated, or transcribed. The requirements for language tags are detailed in RFC 5646: "Tags for Identifying Languages."[6] Extensions to the Extensible Provisioning Protocol (EPP) to allow for the exchange of transformed content and language tag data within RDDS per the above RFCs will be required to fully implement the policy recommendations. In addition, the RDAP profile will also need to be revised to support language tag data. The Internet-Draft "RDAP Transformation of Contact Information" illustrates how the RDAP profile could be updated to accommodate these tags.[7] The Registration Data Policy would not change the requirements for language tags, which will accompany contact information contained within the "Registrant," "Admin," and "Tech" fields of an RDDS output that have been transformed (i.e. translated, transliterated, or transcribed). If a transformation is performed, these tags will also accompany the original contact information data fields in order to identify the source language.

4. Under the draft Registration Data Policy, registrars must publish an email address or a link to a web form for the email value to facilitate email communication with the relevant contact, but must not identify the contact email address or the contact itself. However, the T/T policy recommendations relate to translation and transliteration of contact information of a registration and do not address whether the mechanisms to communicate with the relevant contact, such as anonymized email or web forms, should also be translated or transliterated. As such, the scope of work of the T/T IRT, tasked with implementing these recommendations, is focused on the entry and transformation (i.e. translation or transliteration) of registration data as submitted by registrants, and not on the related tools of communication with the relevant contact. The GNSO may wish to consider if changes to the recommendations are needed in light of the policy work done by the EPDP Phases 1 and 2.

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[5] See https://tools.ietf.org/html/rfc6497
[6] See https://tools.ietf.org/html/rfc5646#section-2
[7] See https://tools.ietf.org/html/draft-lozano-regext-rdap-transf-contact-inf-00.

4   Next Steps

The process for Recommendation 27 is intended to identify which, if any, policies and procedures require updates based on the EPDP Phase 1 recommendations, and to determine the appropriate path for such updates.[8] Overall, the impacts described in this report appear to be within the remit of the GNSO. Both of the topics in this report are consensus policy recommendations for which implementation work was placed on hold pending the completion of the EPDP Team's work. This draft report is being shared with the EPDP Phase 1 IRT for review and validation that the GNSO is the appropriate path for the identified items.

Following this review step, the report, with any updates from the EPDP Phase 1 IRT review, will be submitted to the GNSO Council. The GNSO Council may wish to consider this feedback in determining what the appropriate next steps are for addressing the impacts identified.

4.1   Privacy and Proxy Services Accreditation Issues Implementation

As part of the analysis the EPDP Phase 1 recommendations directed, ICANN org has identified some areas of the PPSAI recommendations that require clarification in order to proceed with next steps and resume implementation work.

In a letter to the GNSO Council in September 2019, ICANN org indicated that: "…following the completion of relevant EPDP work, ICANN org will reassess the existing draft PP materials in consultation with the PPSAI IRT and determine how to proceed with implementation of the Privacy and Proxy Services Accreditation Program." In light of changes that have occurred to the registration data policy environment since the PPSAI IRT paused its work, as well as the policy and/or implementation issues that have been identified through this analysis, the GNSO

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[8] Note that for existing policies and procedures impacted by the new Registration Data Policy requirements that require terminology updates as described in the final report for Wave 1 of the EPDP Phase 1 Recommendation 27, as well as possible interim solutions as described in the "Possible next steps EPDP P1 Wave 1 Rec 27", the GNSO Council has instructed the EPDP Phase 1 IRT to prepare draft revisions of the affected policies for public comment, and to advise the GNSO Council if possible policy changes are required.

Council may wish to consider clarifying the intended impact of its EPDP recommendations on the prior PPSAI recommendations.

Fundamentally, the EPDP, which has recently concluded, and the PPSAI recommendations incorporate work toward the same goal, which is to determine a lawful mechanism for access to and treatment of non-public registration data. It is expected that the appropriate next steps for these recommendations will be determined based on review and assessment of the impacted areas as described in this report.

- ○ For example, the GNSO Council could advise that the EPDP recommendations are intended to have no impact on ICANN org's implementation of the PPSAI recommendations. In other words, the EPDP Phase 1 recommendations concerning the processing of registration data should have no impact on the processing of the data protected by a privacy or proxy registration service.[9] Due to the overlaps between the EPDP Team's work and the PPSAI recommendations as described here, it appears that significant changes would be needed to the proposed implementation of PPSAI previously considered by the PPSAI IRT. This was last discussed with the PPSAI IRT prior to the effective date of the GDPR, and the significant efforts of the EPDP Team with regard to contracted party requirements for the processing of nonpublic gTLD registration data would need to be accounted for in the implementation of PPSAI recommendations. In this scenario, ICANN org would initiate a dialogue with the currently dormant PPSAI IRT regarding these issues and whether implementation of all 2015 recommendations is feasible.

- ○ The GNSO Council could initiate a process to provide policy guidance (GNSO Guidance Process, Expedited Policy Development Process, or other process as appropriate) if changes to previous PPSAI recommendations are determined to be needed in light of the policy work done by the EPDP Phase 1 team. As noted above, the PPSAI recommendations were intended to complement, not

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[9] This question will also be relevant for the Phase 2 recommendations, if approved by the Board. The topic was raised in comments on the Phase 2 report by Article 19, Info Networks LLC, and ICANN organization. See https://docs.google.com/spreadsheets/d/1EBiFCsWfqQnMxEcCaKQywCccEVdBc9_ktPA3PU8nrQk/edit

contradict or supersede, ICANN's registry and registrar contracts (including in relation to WHOIS). If the GNSO Council were to advise on how its EPDP recommendations are intended to impact (or be impacted by) PPSAI recommendations as well as which PPSAI recommendations will be unaffected, ICANN org and the IRT could proceed with implementation of the EPDP recommendations and the PPSAI recommendations in a coordinated manner.

○ Other next steps could be possible as determined within the GNSO. For example, some PPSAI recommendations could be implemented while others were discussed for possible changes or identified as obsolete, if certain recommendations are determined to be separable. To help facilitate the Council's discussion and consideration of next steps, ICANN org would also be available to develop and propose options to implement the EPDP recommendations in and PPSAI recommendations in a phased manner that complements the EPDP Team's recommendations and is also aligned with the new registration data environment.

In light of the variety of intertwined issues involved, ICANN org proposes to share this report on the areas outlined above with the GNSO Council. ICANN org is ready and willing to participate in any discussion on this issue, as the GNSO determines is appropriate, to help move forward.

4.2   Translation & Transliteration of Contact Information Implementation

Although ICANN org has not identified any substantive impact of the Registration Data Policy on T/T, some clarifications may be needed to harmonize the T/T policy recommendations with the new Registration Data Policy requirements. For instance, as discussed in section 3.2 above, the T/T policy recommendations do not address whether the mechanisms to communicate with the relevant contact, such as anonymized email or web forms, which are specified under the new policy, should also be translated or transliterated as this was outside the scope of the T/T PDP. Given that translation and transliteration of contact information are optional and not mandatory for registrars, it may be beneficial to specify whether the option to translate or transliterate applies here as well.

To better coordinate and facilitate consistency in implementation, the GNSO could advise on whether the EPDP recommendations outlined above are intended to impact ICANN org's implementation of T/T or necessitate updates to the T/T policy recommendations. If policy work is to be initiated, these issues could be considered as part of the PDP. Based on guidance from the GNSO, ICANN org would then proceed with implementation of the T/T recommendations in a uniform and harmonized manner. Alternatively, the GNSO could request that ICANN org, in consultation with the IRT, draft any proposed revisions for public comment, continue to implement the existing T/T recommendations in compliance with the registration data policies, and advise the GNSO Council if possible policy issues are identified.