ICANN | GNSO

Generic Names Supporting Organization

Addendum to: Initial Report of the Temporary Specification for gTLD Registration Data Phase 2 Expedited Policy Development Process

26 March 2020

Status of This Document

This is the addendum to the Initial Recommendations Report of the GNSO Expedited Policy Development Process (EPDP) Team on the Temporary Specification for gTLD Registration Data Phase 2 that has been posted for public comment.

Preamble

The objective of this addendum to the Initial Report is to document the EPDP Team's: (i) deliberations on priority 2 charter questions, (ii) preliminary recommendations, and (iii) additional identified issues to consider before the Team issues its Final Report. The EPDP Team will produce its Final Report after its review of the public comments received in response to this addendum. The EPDP Team will submit its Final Report to the GNSO Council for its consideration.

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1 Executive Summary

1.1 Background

The scope for the EPDP Phase 2 includes (i) discussion of a system for standardized access/disclosure to nonpublic registration data, (ii) issues noted in the Annex to the Temporary Specification for gTLD Registration Data ("Important Issues for Further Community Action"), and (iii) issues deferred from Phase 1, e.g., legal vs natural persons, redaction of city field, et. al. For further details, please see here[1].

In order to manage its time efficiently, the EPDP Team divided these topics into priority 1 and priority 2 items. Priority 1 items consisted of addressing the questions and developing recommendations in relation to the System for Standardized Access / Disclosure to non-public registration data (SSAD), and priority 2 items included the following the following topics:

- Display of information of affiliated vs. accredited privacy / proxy providers
- Legal vs. natural persons
- City field redaction
- Data retention
- Potential Purpose for ICANN's Office of the Chief Technology Officer
- Feasibility of unique contacts to have a uniform anonymized email address
- Accuracy and WHOIS Accuracy Reporting System
- Purpose 2

For further information on the priority 2 items, please see the relevant worksheets which can be found here[2].

As a result of external dependencies and time constraints, the Initial Report did not include any priority 2 items. However, subsequent to the publication of the Initial Report, the EPDP Team turned its attention to the priority 2 items, which have been documented in this addendum.

[1] https://community.icann.org/download/attachments/105388008/EPDP Team Phase 2 - upd 10 March 2019.pdf?version=1&modificationDate=1556060745000&api=v2
[2] https://community.icann.org/x/5oaGBg

1.2 Preliminary Recommendations and Conclusions Priority 2 items

Preliminary Recommendation #20. Display of information of affiliated vs. accredited privacy / proxy providers
In the case of a domain name registration where an 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 accredited privacy/proxy service in response to an RDDS query. The full privacy/proxy RDDS data may include a pseudonymized email.

Preliminary Conclusion – Legal vs. Natural Persons
There is a persistent divergence of opinion on if/how to address this topic within the EPDP Team. As a result, the EPDP Team will consult with the GNSO Council on potential next steps.

Preliminary Conclusion – City Field Redaction
No changes are recommended to the EPDP Phase 1 recommendation that redaction must be applied to the city field.

Preliminary Recommendation #21. Data Retention
The EPDP Team confirms its recommendation from phase 1 that registrars be required to retain only those data elements deemed necessary for the purposes of the TDRP, for a period of fifteen months following the life of the registration plus three months to implement the deletion, i.e., 18 months. This retention is grounded on the stated policy stipulation within the TDRP that claims under the policy may only be raised for a period of 12 months after the alleged breach (FN: see TDRP section 2.2) of the Transfer Policy (FN: see Section 1.15 of TDRP). For clarity, this does not prevent requestors, including ICANN Compliance, from requesting disclosure of these retained data elements for purposes other than TDRP, but disclosure of those will be subject to relevant data protection laws, e.g., does a lawful basis for disclosure exist. For the avoidance of doubt, this retention period does not restrict the ability of registries and registrars to retain data elements for longer periods.

Preliminary Conclusion – OCTO Purpose
Having considered this input, most members of the EPDP Team agreed that at this stage, there is no need to propose an additional purpose(s) to facilitate ICANN's Office of the Chief Technology Officer (OCTO) in carrying out its mission. Most also agreed that the EPDP Team's decision to refrain from proposing an additional purpose(s) would not prevent ICANN org and/or the community from identifying additional purposes to support unidentified future activities that may require access to non-public registration data.

Preliminary Conclusion - Feasibility of unique contacts to have a uniform anonymized email address
The EPDP Team received legal guidance[3] noting that the publication of uniform masked email addresses results in the publication of personal data; therefore, wide publication of uniform masked email addresses is not currently feasible under the GDPR.

Preliminary Conclusion – Accuracy and Whois Accuracy Reporting System
Per the instructions from the GNSO Council, the EPDP Team will not consider this topic further; instead, the GNSO Council is expected to form a scoping team to further explore the issues in relation to accuracy and ARS to help inform a decision on appropriate next steps to address potential issues identified.

Preliminary Recommendation #22. Purpose 2
The EPDP Team recommends the following purpose be added to the Phase 1 purposes[4], which form the basis of the new ICANN policy:

- Contribute to the maintenance of the security, stability, and resiliency of the Domain Name System in accordance with ICANN's mission.

1.3 Conclusions and Next Steps

This addendum to the Initial Report will be posted for public comment for 40 days. After the EPDP Team's review of public comments received on this Report and its Initial Report, the EPDP Team will update its Final Report and include priority 2 items, where appropriate, prior to submitting the Final Report to the GNSO Council.

1.4 Other Relevant Sections

For a complete review of the issues and relevant interactions of this EPDP Team, please review the following sections which are included in the Initial Report[5]:

- Documentation of who participated in the EPDP Team's deliberations, including attendance records, and links to Statements of Interest as applicable;
- An annex that includes the EPDP Team's mandate as defined in the Charter adopted by the GNSO Council; and
- Documentation on the solicitation of community input through formal SO/AC and SG/C channels, including responses.

[3] https://community.icann.org/display/EOTSFGRD/EPDP+-P2+Legal+subteam?preview=/111388744/126424478/Memo%20-%20ICANN%20-%2004.02.2020.docx
[4] See EPDP Phase 1 Final Report, recommendation #1 – this concerns an ICANN Purpose for processing gTLD Registration Data - https://gnso.icann.org/sites/default/files/file/field-file-attach/epdp-gtld-registration-data-specs-final-20feb19-en.pdf
[5] https://gnso.icann.org/en/issues/epdp-phase-2-initial-07feb20-en.pdf

2 EPDP Team Approach

This Section provides an overview of the working methodology and approach of the EPDP Team. The points outlined below are meant to provide the reader with relevant background information on the EPDP Team's deliberations and processes and should not be read as representing the entirety of the efforts and deliberations of the EPDP Team.

2.1 Working Methodology

The EPDP Team scoped the priority 2 issues early on, using standardized worksheets[6], and followed up on a number of questions with ICANN org and its external legal counsel but deferred deliberations until after publication of the Initial Report on 7 February 2020. The Team progressed its deliberations on priority 2 items primarily through conference calls scheduled one or more times per week, in addition to email exchanges on its mailing list. All of the EPDP Team's meetings are documented on its wiki workspace[7], including its mailing list[8], draft documents, background materials, and input received from ICANN's Supporting Organizations and Advisory Committees, including the GNSO's Stakeholder Groups and Constituencies.

2.2 Legal Committee

Recognizing the complexity of many issues the EPDP Team was chartered to work through in Phase 2, the EPDP Team requested resources for the external legal counsel of Bird & Bird. To assist in preparing draft legal questions for Bird & Bird, EPDP Leadership chose to assemble a Legal Committee, comprised of one member from each SO/AC represented on the EPDP Team.

The Phase 2 Legal Committee worked together to review questions proposed by the members EPDP Team to help ensure:

1. the questions were truly legal in nature, as opposed to policy or policy implementation questions;
2. the questions were phrased in a neutral manner, avoiding both presumed outcomes as well as constituency positioning;
3. the questions were both apposite and timely to the EPDP Team's work; and
4. the limited budget for external legal counsel was used responsibly.

[6] https://community.icann.org/x/5oaGBg
[7] https://community.icann.org/x/ehdIBg
[8] https://mm.icann.org/pipermail/gnso-epdp-team/

For the priority 2 work specifically, the Legal Committee unanimously agreed to send two new questions to Bird & Bird. The Legal Committee also reviewed legal guidance from Phase 1 as it deliberated the priority 2 items.

The full text of the questions and legal advice received in response to the questions can be found here[9] and here[10].

2.3 Charter Questions

In addressing the priority 2 charter questions, the EPDP Team considered both (1) the input provided by each group as part of the deliberations; (2) relevant input from phase 1; (3) the input provided by each group in response to the request for Early Input[11] in relation to the specific charter questions; (4) the required reading identified for each topic in the worksheets[12], and (5) input[13] provided by the EPDP Team's legal advisors, Bird & Bird.

[9] https://community.icann.org/x/thFIBg
[10] https://community.icann.org/x/SKijBg
[11] https://community.icann.org/x/zIWGBg
[12] https://community.icann.org/x/5oaGBg
[13] https://community.icann.org/x/SKijBg

3 EPDP Team Deliberations and & Preliminary Recommendations concerning Priority 2 Items

The EPDP Team will not finalize its responses to the priority 2 questions and recommendations to the GNSO Council until it has conducted a thorough review of the comments received during the public comment period on this addendum to its Initial Report. At the time of publication of this addendum, no formal consensus call has been taken on these responses and preliminary recommendations; however, this addendum to the Initial Report did receive the support of the EPDP Team for publication for public comment.[14] Where applicable, differing positions have been reflected in the Report.

3.1 Display of information of affiliated vs. accredited privacy / proxy providers

During phase 1, the EPDP Team made the following recommendation:

> *"In the case of a domain name registration where an "affiliated" privacy/proxy service used (e.g. where data associated with a natural person is masked), Registrar (and Registry where applicable) MUST include in the public RDDS and return in response to any query full non-personal RDDS data of the privacy/proxy service, which MAY also include the existing privacy/proxy pseudonymized email.*
>
> *Note, PPSAI is an approved policy that is currently going through implementation. It will be important to understand the interplay between the display of information of affiliated vs. accredited privacy / proxy providers. Based on feedback received on this topic from the PPSAI IRT, the EPDP Team may consider this further in phase 2".*

The EPDP Team agreed that as part of its consideration in phase 2 it would need to confirm that either:

1. the display of information of an affiliated vs. accredited privacy / proxy providers is addressed in the context of the implementation of PPSAI OR
2. a recommendation that confirms how accredited privacy / proxy providers may/must be identified in the public RDDS.

To confirm 1, the EPDP Team reached out to ICANN org with the following question:

[14] Following a review of public comments, the EPDP Team will take a formal consensus call before producing its Final Report.

> "As part its work in Phase 1, the EPDP Team made the following recommendation in its Final Report[15]: "In the case of a domain name registration where an 'affiliated' privacy/proxy service used (e.g., where data associated with a natural person is masked), Registrar (and Registry where applicable) MUST include in the public RDDS and return in response to any query full non-personal RDDS data of the privacy/proxy service, which MAY also include the existing privacy/proxy pseudonymized email."

The EPDP Team went on to note,

> "PPSAI is an approved policy that is currently going through implementation. It will be important to understand the interplay between the display of information of affiliated vs. accredited privacy / proxy providers. Based on feedback received on this topic from the PPSAI IRT, the EPDP Team may consider this further in phase 2.
>
> As you are aware, the Privacy and Proxy Services Accreditation Issues Working Group recommended the following, "[t]o the extent that this is feasible, domain name registrations involving P/P service providers should be clearly labelled as such in WHOIS.
>
> Can you please provide clarifying information on how this recommendation is being implemented?"

ICANN org provided the following response:

> "[The above] request references two recommendations, EPDP Phase 1 Recommendation 14 (and its accompanying note), and PPSAI Recommendation 4. In asking, "Can you please provide clarifying information on how this recommendation is being implemented?" I understand you to be asking about PPSAI Recommendation 4. The EPDP Phase 1 IRT is in the process of implementing EPDP Phase 1, Recommendation 14.
>
> As you are aware, the PPSAI implementation (and IRT) is on hold pending the resolution of the EPDP Phase 2 work. There is no current activity underway.
>
> In term of the implementation of PPSAI Recommendation 4, the PP IRT was considering a proposed requirement that all privacy and proxy service providers include a label, which would flag each registration as a privacy/proxy registration and identify which provider is associated with that registration, in the existing WHOIS output "registrant organization" field. (See Draft PPAA,

[15] https://gnso.icann.org/sites/default/files/file/field-file-attach/epdp-gtld-registration-data-specs-final-20feb19-en.pdf

> distributed to PP IRT 12 Sept 2018, at https://mm.icann.org/pipermail/gdd-gnso-ppsai-impl/attachments/20180913/426735f5/PPAA_12Sept_IRTMarkUp-0001.pdf, Section 3.15).
>
> This requirement would apply to all privacy and proxy service providers, regardless of whether the provider is affiliated with a registrar or registry operator or operating independently of any other contracted party. The draft privacy and proxy service provider accreditation agreement does not distinguish between requirements for registrar-affiliated and non-affiliated privacy and proxy service providers, at the direction of the PPSAI IRT. The draft requirements would require all privacy and proxy service providers to become accredited to continue offering those services. This requirement for accreditation would be enforced through the registrar, on the grounds that accredited registrars could not knowingly accept registrations involving a privacy or proxy service from an unaccredited provider (See PPSAI recommendation 1, note, p. 7, https://gnso.icann.org/sites/default/files/filefield_48305/ppsai-final-07dec15-en.pdf).
>
> Following the completion of the EPDP Phase 2 work and the Rec 27 analysis, the existing draft PPSAI materials will need to be revisited to ensure consistency with the EPDP-recommended requirements, and to ensure the requirements and processes fit together in a manner that will create a transparent, predictable, and reasonable process for all parties involved."

The EPDP Team noted that at the time of publication of this report, the implementation of the Privacy and Proxy Services Accreditation Issues ("PPSAI") Working Group's recommendations is on hold. Accordingly, the EPDP Team phase 2 working group confirms that Phase 1 Rec #14 remains in place.

The EPDP Team notes the current implementation plan for the PPSAI Working Group's recommendations contemplates that all domains registered via accredited privacy/proxy services providers will be labeled or flagged as such in the domain registration data. Once the policy has been implemented, clearly labelling or flagging domain registrations as privacy/proxy, the EPDP Team recommends the following:

Preliminary Recommendation #20. Display of information of affiliated vs. accredited privacy / proxy providers

In the case of a domain name registration where an 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 accredited privacy/proxy service in response to an RDDS query. The full privacy/proxy RDDS data may include a pseudonymized email.

Implementation notes:

1) Because accredited privacy/proxy registrations are expected to be a superset of affiliated privacy/proxy registrations (as described in the EPDP phase 1 recommendations), this recommendation once in effect replaces or otherwise supersedes EPDP phase 1 recommendation 14.
2) The intent of this recommendation is to provide clear instruction to registrars (and registries where applicable) that where a domain registration is done via accredited privacy/proxy provider, that data MUST NOT also be redacted. The working group is intending that domain registration data should NOT be both redacted and privacy/proxied.
3) This recommendation MUST NOT be implemented until the PPSAI policy clearly labelling or flagging domain registrations as privacy/proxy is implemented (note, this does not impact the EPDP Phase 1 policy recommendation in relation to "affiliated" privacy / proxy services).

3.2 Legal vs. Natural Persons

From the EPDP Team Phase 1 Final Report: EPDP Team Recommendation #17.

1) The EPDP Team recommends that Registrars and Registry Operators are permitted to differentiate between registrations of legal and natural persons, but are not obligated to do so.

2) The EPDP Team recommends that as soon as possible ICANN Org undertakes a study, for which the terms of reference are developed in consultation with the community, that considers:

- *The feasibility and costs including both implementation and potential liability costs of differentiating between legal and natural persons;*
- *Examples of industries or other organizations that have successfully differentiated between legal and natural persons;*
- *Privacy risks to registered name holders of differentiating between legal and natural persons; and*
- *Other potential risks (if any) to registrars and registries of not differentiating.*

3) The EPDP Team will determine and resolve the Legal vs. Natural issue in Phase 2.

As part of ICANN org's research for Recommendation 17.2 of the EPDP Team's Phase 1 Final Report, ICANN org launched a short questionnaire (see https://icannprds.typeform.com/to/ehG295) to collect input on the risks, feasibility, and costs of differentiating between legal and natural persons in registration data directory services (RDDS). The questionnaire was launched in February 2020 and will be open until 20 March 2020. The feedback will be integrated into the report on

Recommendation 17.2, which is expected to be shared with the EPDP Team in May 2020.

The EPDP Team also took note of the legal guidance[16] provided during Phase 1 and recently received guidance[17] during Phase 2 which has not been reviewed yet by the full EPDP Team. Some members of the team consider this a policy issue rather than a legal issue.

Preliminary Conclusion – Legal vs. Natural Persons
There is a persistent divergence of opinion on if/how to address this topic within the EPDP Team. As a result, the EPDP Team will consult with the GNSO Council on potential next steps.

3.3 City Field Redaction

From the EPDP Team Phase 1 Final Report: EPDP Team Recommendation #11

The EPDP Team recommends that redaction must be applied as follows to this data element:

Data Element	*Redacted*
Registrant Field	
• *City*	*Yes*

The EPDP Team expects to receive further legal advice on this topic, which it will analyze in phase 2 of its work to determine whether or not this recommendation should be modified.

As part of phase 2, the EPDP Team is expected to confirm whether there needs to be a change to the phase 1 recommendation that the city field should be redacted in the public RDDS. If no change is deemed necessary, the recommendation from phase 1 will stand as it is.

As part of its deliberations, the EPDP Team considered the legal guidance[18] provided by Bird & Bird in which it advises that further information is required in order to determine whether the Article 6(1)(f) balancing test is satisfied for universal publication

[16] https://community.icann.org/download/attachments/102138857/Natural vs. Legal Memo.docx?version=1&modificationDate=1548874825000&api=v2
[17] https://community.icann.org/download/attachments/111388744/ICANN memo 13 March 2020 - consent.docx?version=1&modificationDate=1584121399000&api=v2
[18] https://community.icann.org/download/attachments/102138857/ICANN - Memo on publication of the City field %28130219%29.docx?version=1&modificationDate=1550152144000&api=v2

of the City field in public RDDS. In particular, Bird & Bird advises the EPDP team to develop additional information regarding the benefits to third-parties and consider whether the benefits are sufficiently meaningful to justify universal publication, or only applicable to limited use cases? Additionally, Bird & Bird advises the EPDP team to consider more facts regarding the potential impact of universal publication on the rights and interests of data subjects. Following the collection of additional data, the parties should conduct a detailed assessment (as outlined below) to determine whether the third-party interests outweigh those of the data subject. (3.16-3.17)

Based on subsequent deliberations, the EPDP Team concluded that it is not able to provide a rationale that would justify universal publication of the city field. As such, the EPDP Team does NOT recommend any changes to the phase 1 recommendation that city field MUST be redacted. Some members in the EPDP Team did indicate that based on an analysis of risk, some Contracted Parties might decide to publish the city field in RDDS, which would be permissible in certain circumstances, per EPDP phase 1 recommendations #16 and #17. The EPDP Team did agree to further consider whether automated disclosure of the city field within the SSAD is legally permissible in certain circumstances.

Preliminary Conclusion – City Field Redaction
No changes are recommended to the EPDP Phase 1 recommendation that redaction must be applied to the city field.

3.4 Data Retention

From the EPDP Team Phase 1 Final Report: EPDP Team Recommendation #15.

> *1. In order to inform its Phase 2 deliberations, the EPDP team recommends that ICANN Org, as a matter of urgency, undertakes a review of all of its active processes and procedures so as to identify and document the instances in which personal data is requested from a registrar beyond the period of the 'life of the registration'. Retention periods for specific data elements should then be identified, documented, and relied upon to establish the required relevant and specific minimum data retention expectations for registrars. The EPDP Team recommends community members be invited to contribute to this data gathering exercise by providing input on other legitimate purposes for which different retention periods may be applicable.*
>
> *2. In the interim, the EPDP team has recognized that the Transfer Dispute Resolution Policy ("TDRP") has been identified as having the longest justified retention period of one year and has therefore recommended registrars be required to retain only those data elements deemed necessary for the purposes of the TDRP, for a period of fifteen months following the life of the registration plus three months to implement the deletion, i.e., 18 months12. This retention is*

grounded on the stated policy stipulation within the TDRP that claims under the policy may only be raised for a period of 12 months after the alleged breach (FN: see TDRP section 2.2) of the Transfer Policy (FN: see Section 1.15 of TDRP). This retention period does not restrict the ability of registries and registrars to retain data elements provided in Recommendations 4 -7 for other purposes specified in Recommendation 1 for shorter periods.

3. The EPDP team recognizes that Contracted Parties may have needs or requirements for different retention periods in line with local law or other requirements. The EPDP team notes that nothing in this recommendation, or in separate ICANN-mandated policy, prohibits contracted parties from setting their own retention periods, which may be longer or shorter than what is specified in ICANN policy.

4. The EPDP team recommends that ICANN Org review its current data retention waiver procedure to improve efficiency, request response times, and GDPR compliance, e.g., if a Registrar from a certain jurisdiction is successfully granted a data retention waiver, similarly-situated Registrars might apply the same waiver through a notice procedure and without having to produce a separate application.

In response to 15.1, ICANN org provided its review to the EPDP Team on 1 November 2019 (see https://mm.icann.org/pipermail/gnso-epdp-team/2019-November/002747.html) noting that:

> "ICANN org was asked to respond to the Phase 1 recommendation 15 to identify and document instances where ICANN org has a need for data beyond the life of a domain name registration, with the intent of informing the Phase 2 deliberations. In the interim, the EPDP Phase 1 team recommended that an 18-month data retention requirement be in place for registrars as part of the Phase 1 policy.
>
> Implementation of the 18-month requirement is applicable to the provisions of the RAA Data Retention Specification on retention of registration data elements; other existing retention requirements (e.g., for records of communications) are not changed.
>
> We have identified one instance where ICANN org would be requesting data from a registrar beyond the life of the registration. This instance is contractual compliance functions, particularly around expiration and deletion of names. ICANN org cannot investigate registrar compliance with relevant policy and contractual requirements this if data is not retained.

> Contractual Compliance functions do not prescribe particular data retention periods and ICANN org will perform its compliance function to the extent possible within the applicable period.
>
> The RAA Data Retention Specification is not primarily in place for ICANN org to use data retained by registrars, but rather to support other purposes such as registrant protection, technical issue resolution, security and stability, abuse mitigation, and others."

Having considered this input, the EPDP Team reaffirms and recommends the following:

Preliminary Recommendation #21. Data Retention
The EPDP Team confirms its recommendation from phase 1 that registrars be required to retain only those data elements deemed necessary for the purposes of the TDRP, for a period of fifteen months following the life of the registration plus three months to implement the deletion, i.e., 18 months. This retention is grounded on the stated policy stipulation within the TDRP that claims under the policy may only be raised for a period of 12 months after the alleged breach (FN: see TDRP section 2.2) of the Transfer Policy (FN: see Section 1.15 of TDRP). For clarity, this does not prevent requestors, including ICANN Compliance, from requesting disclosure of these retained data elements for purposes other than TDRP, but disclosure of those will be subject to relevant data protection laws, e.g., does a lawful basis for disclosure exist. For the avoidance of doubt, this retention period does not restrict the ability of registries and registrars to retain data elements for longer periods.

Implementation Note:
For the avoidance of doubt, registrars are required to maintain the data for 15 months following the life of the registration and MAY delete that data following the 15-month period.

3.5 Potential Purpose for ICANN's Office of the Chief Technology Officer

From the EPDP Phase 1 Final Report:

> *As part of phase 1, the EPDP Team made the following recommendation: "The EPDP Team commits to considering in Phase 2 of its work whether additional purposes should be considered to facilitate ICANN's Office of the Chief Technology Officer (OCTO) to carry out its mission (see https://www.icann.org/octo). This consideration should be informed by legal guidance on if/how provisions in the GDPR concerning research apply to ICANN Org and the expression for the need of such pseudonymized data by ICANN."*

The EPDP Team followed up with ICANN org on whether the status of input provided during phase 1 (see https://community.icann.org/x/ahppBQ) has changed and/or whether any legal guidance has been obtained in relation to ICANN org having a qualified research position under GDPR.

ICANN Org liaisons provided their response on 25/2 noting that:
"On 4 December 2018[19], ICANN org provided answers to questions the EPDP Team posed regarding the use of registration data by certain ICANN org functions. As part of the EPDP's Phase 2 work, the Team has asked support staff to follow-up with ICANN org on whether the status of the input provided during Phase 1 has changed. Following internal discussions and review of previous ICANN org responses submitted to the EPDP Team, ICANN org has determined that the input provided on the use of data by ICANN org departments has not changed. ICANN org has not identified additional purposes for access to **non-public registration data** needed by ICANN org to support its current work.

ICANN org's contractual compliance function currently requests and processes registration data directly from registries and registrars under the Registry Agreement and Registrar Accreditation Agreement (RAA). This is reflected in the EPDP Team's Phase 1 Final Report under Purpose 5. Per that recommendation, ICANN contractual compliance may request data directly from the registrar or registry to "i) Handle contractual compliance monitoring requests and audit activities consistent with the terms of the Registry agreement and the Registrar accreditation agreements and any applicable data processing agreements, by processing specific data only as necessary; ii) Handle compliance complaints initiated by ICANN org, or third parties consistent with the terms of the Registry agreement and the Registrar accreditation agreements." Depending on the model recommended by the Team, there could be advantages to using the SSAD to access data for carrying out compliance activities.

In the case of an unforeseen activity or new initiative proposed by the multistakeholder community that would require ICANN org to obtain access to **non-public registration data** for a new purpose, ICANN org would need to undertake this via a direct request to contracted parties, negotiating a change to contractual requirements to obligate contracted parties to provide the relevant data, or development and implementation of a new consensus policy.

We understand the EPDP Team's primary interest to be purposes for which ICANN org would access **non-public data** through the SSAD, as discussed above. It should be noted that there are multiple instances where ICANN org processes **public data**, for example, through Bulk Registration Data Access (BRDA) submissions, or through the Centralized Zone File Data System/Service (CZDS). We can answer additional questions on ICANN

[19] https://mm.icann.org/pipermail/gnso-epdp-team/2018-December/001027.html

org's processing of **public data** if the Team is interested in further information on these.

We also note that a set of previously undertaken data processing activities associated with the Whois Accuracy Reporting System (Whois ARS), and using **publicly available registration data**, have not been continued by ICANN org following adoption of the Temporary Specification in May 2019. We note that the EPDP Team's Phase 1 report indicated that "the topic of accuracy as related to GDPR compliance is expected to be considered further as well as the WHOIS Accuracy Reporting System." With regard to any proposed processing activities for ICANN org around data accuracy based on the Team's Phase 2 recommendations, we believe this requires a deeper discussion including such factors as data subjects' rights, intended purposes for data processing under applicable law, feasibility, and value added for such purposes."

Preliminary Conclusion – OCTO Purpose
Having considered this input, most members of the EPDP Team agreed that at this stage, there is no need to propose an additional purpose(s) to facilitate ICANN's Office of the Chief Technology Officer (OCTO) in carrying out its mission. Most also agreed that the EPDP Team's decision to refrain from proposing an additional purpose(s) would not prevent ICANN org and/or the community from identifying additional purposes to support unidentified future activities that may require access to non-public registration data.

3.6 Feasibility of unique contacts to have a uniform anonymized email address

The Annex: Important Issues for Further Community Action[20] "set[s] forth implementation issues raised during the course of development of this Temporary Specification for which the ICANN Board encourages the community to continue discussing so that they may be resolved as quickly as possible after the effective date of the Temporary Specification." The EPDP Team, as part of its Phase 2 deliberations, was chartered to review issues within the Annex[21], including,

> "2. Addressing the feasibility of requiring unique contacts to have a uniform anonymized email address across domain name registrations at a given Registrar, while ensuring security/stability and meeting the requirements of Section 2.5.1 of Appendix A."

In reviewing this topic, the Legal Committee posed the following question to its outside counsel, Bird & Bird:

[20] https://www.icann.org/resources/pages/gtld-registration-data-specs-en/#annex
[21] https://www.icann.org/resources/pages/gtld-registration-data-specs-en/#annex

> *The group has discussed the option of replacing the email address provided by the data subject with an alternate email address that would in and of itself not identify the data subject (Example: 'sfjgsdfsafgkas@pseudo.nym'). With this approach, two options emerged in the discussion, where*
> *(a) the same unique string would be used for multiple registrations by the data subject ('pseudonymisation'), or*
> *(b) the string would be unique for each registration ('anonymization').*
>
> *Under option (a), the identity of the data subject might - but need not necessarily - become identifiable by cross-referencing the content of all domain name registrations the string is used for.*
>
> *From these options, the following question arose: Under options (a) and/or (b), would the alternate address have to be considered as personal data of the data subject under the GDPR and what would be the legal consequences and risks of this determination with regard to the proposed publication of this string in the publicly accessible part of the registration data service (RDS)?*

In its summary response, Bird & Bird noted the following:

> "[Options (a) and (b) described above] would still be treated as the publication of personal data on the web. This would seem to be a case covered by a statement made in the Article 29 Working Party's 2014 Opinion on Anonymization techniques [ec.europa.eu]: "when a data controller does not delete the original (identifiable) data at event-level, and the data controller hands over part of this dataset (for example after removal or masking of identifiable data), the resulting dataset is still personal data." The purpose for making this e-mail address available, even though it's masked, is presumably to allow third parties to directly contact the data subject (e.g. to serve them with court summons, demand takedowns, etc.) – so it's quite clearly linked to that particular data subject, at least so far as ICANN/Contracted Parties are concerned. However, either option would be seen as a valuable privacy-enhancing technology (OPET) / privacy by design measure."

Following the receipt of the above advice, the EPDP Legal Committee briefed the EPDP Team and noted the risks identified in Bird & Bird's response. While the masking of personal email addresses is a "valuable privacy-enhancing technology," the publication of masked email addresses is still considered publication of personal data. Accordingly, the EPDP Team is providing the following response to the question regarding addressing the feasibility of requiring unique contacts to have a uniform masked email address across domain name registrations at a given Registrar, while ensuring security/stability and meeting the requirements of Section 2.5.1 of Appendix A:

Preliminary Conclusion - Feasibility of unique contacts to have a uniform anonymized email address

The EPDP Team received legal guidance[22] noting that the publication of uniform masked email addresses results in the publication of personal data; therefore, wide publication of uniform masked email addresses is not currently feasible under the GDPR.

3.7 Accuracy and WHOIS Accuracy Reporting System

From the EPDP Team Phase 1 Final Report: EPDP Team Recommendation #4

*The EPDP Team recommends that requirements related to the accuracy of registration data under the current ICANN contracts and consensus policies shall not be affected by this policy.**

** Footnote: The topic of accuracy as related to GDPR compliance is expected to be considered further as well as the WHOIS Accuracy Reporting System.*

The EPDP Team also took note of the legal guidance provided during phase 1 (see here[23]).

As there was lack of clarity in relation to the expectation of the GNSO Council in relation to this topic, noting that in parallel an exchange of letters had taken place between the GNSO Council and ICANN org (see https://www.icann.org/en/system/files/correspondence/marby-to-drazek-05dec19-en.pdf, amongst others), the Chair of the EPDP Team requested[24] the GNSO Council for further guidance.

The GNSO Council provided its response[25] on 17 March 2020, noting that:

> *"There is broad recognition that the topic of RDS data accuracy is both important and complex, and most believe it will require more time than is currently available to the EPDP for its Phase 2 work on developing policy to support the Standardized System for Access and Disclosure (SSAD). Further, while the Priority 2 issues are included in the Phase 2 work plan, they are not part of the critical path to delivery of the Phase 2 Final Report on the SSAD."*

[22] https://community.icann.org/display/EOTSFGRD/EPDP+-P2+Legal+subteam?preview=/111388744/126424478/Memo%20-%20ICANN%20-%2004.02.2020.docx
[23] https://community.icann.org/download/attachments/102138857/ICANN - Memo on Accuracy.docx?version=1&modificationDate=1550152014000&api=v2
[24] https://mm.icann.org/pipermail/gnso-epdp-team/2020-March/003170.html
[25] https://mm.icann.org/pipermail/gnso-epdp-team/2020-March/003191.html

As a result, the Council outlined an alternative path for how it will address the topic of accuracy. The Council did request the EPDP Team to "to submit the pending legal [questions] to help inform the work of any future scoping team".

The EPDP Chair solicited input from the EPDP Team and did not receive consensus to the question of how the issue of accuracy should be treated.

Preliminary Conclusion – Accuracy and Whois Accuracy Reporting System
Per the instructions from the GNSO Council, the EPDP Team will not consider this topic further; instead, the GNSO Council is expected to form a scoping team to further explore the issues in relation to accuracy and ARS to help inform a decision on appropriate next steps to address potential issues identified.

3.8 Purpose 2

In its Phase 1 Final Report, the EPDP Team recommended the following ICANN Purpose for processing gTLD Registration Data: "Contributing to the maintenance of the security, stability, and resiliency of the Domain Name System in accordance with ICANN's mission through enabling responses to lawful data disclosure requests".

As part of its consideration of the EPDP Phase 1 recommendations, the ICANN Board did not adopt this purpose, also referred to as "Purpose 2," noting:

> *"The Board does not adopt this Recommendation at this time in light of the EPDP Team's characterization of this as a placeholder and the need to consider recent input from the European Commission. Based on the views presented in the recent letters from the European Commission, Purpose 2, as stated in the EPDP Team's Final Report, may require further refinement to ensure that it is consistent with and facilitates ICANN's ability to deliver a predictable and consistent user experience compliant with applicable law. The Board's concern is that if the wording of purpose 2 is deemed inconsistent with applicable law, the impact might be elimination of an ICANN purpose. There are clear ICANN purposes that ICANN should be able to employ under existing legal frameworks to deploy a unified method to enable those with a legitimate and proportionate interest to access non-public gTLD registration data, although such purposes may need to be restated or further refined based on additional legal, regulatory or other input. The Board directs ICANN org to continue to evaluate this proposed purpose and to request additional guidance from the DPAs, regarding the legitimate and proportionate access to registrant data and ICANN's SSR mission".*

Following the EPDP Team's publication of its Final Report, the European Commission provided the following guidance via its letter[26]:

> *"in order to develop a solution for access to non-public gTLD registration data that is compliant with GDPR, a clear distinction should be maintained between the different processing activities that take place and the respective purposes pursued by the stakeholders involved, (…) Accordingly, we consider that a clear distinction needs to be made between ICANN's own purposes for processing personal data and the purposes pursued by the third parties in accessing the data. For this reason, we would recommend revising the formulation of purpose two by excluding the second part of the purpose "through enabling responses to lawful data disclosure requests" and maintaining a broader purpose to "contribute to the maintenance of the security, stability, and resiliency of the Domain Name System in accordance with ICANN's mission", which is at the core of the role of ICANN as the "guardian" of the Domain Name System."*

In its recent resolution[27] concerning the non-adoption of purpose 2, the GNSO Council noted the following:

> *"The GNSO Council has concluded that concerning Recommendation 1, Purpose 2, this is firmly within the scope of the EPDP Team to address as part of its phase 2 deliberations as the original language was already flagged as a placeholder pending further consideration during phase 2."*

The EPDP Team deliberated extensively on this topic and requested the ICANN's Board input; several EPDP Team members observed further guidance regarding ICANN org's thoughts on Purpose 2 would be informative for the EPDP Team's Phase 2 discussion.

The ICANN Board provided its response[28] on 11 March 2020, stating:

> *"The ICANN Board of Directors liaisons to the Phase 2 team intend to express support for a purpose statement that was proposed by the European Commission in its comments to ICANN org on the Phase 1 Final Report".*

At the request of the EPDP Team, the ICANN Board provided[29] a further clarifying statement on 23 March 2020:

> *"Some members of the ePDP have asserted that the formulation of Purpose 2 that has been endorsed by the Board, (Contributing to the maintenance of the security, stability, and resiliency of the Domain Name System in accordance with*

[26] https://www.icann.org/en/system/files/correspondence/odonohue-to-marby-03may19-en.pdf
[27] https://gnso.icann.org/en/council/resolutions#20191219-3
[28] https://gnso.icann.org/en/correspondence/botterman-to-drazek-11mar20-en.pdf
[29] https://mm.icann.org/pipermail/gnso-epdp-team/2020-March/003210.html

ICANN's mission) is problematic because the definition of "security, stability, and resilience" (SSR) is overly broad and all encompassing. This note is intended to provide additional detail on the concept of SSR in the context of ICANN and its processing of personal data as a controller under GDPR.

SSR, as defined in the Bylaws, is ICANN's mission. Article 1, Section 1.1 of the ICANN Bylaws, clearly states that ICANN's mission is to ensure the stable and secure operation (SSR) of the Internet's unique identifier systems. The Bylaws themselves go on to provide significant detail regarding the scope of that mission in the context of names, the root server system, numbers, and protocols.

With respect to names**, ICANN's mission is to coordinate the allocation and assignment of names in the root zone of the DNS and the development and implementation of policies concerning the registration of second-level domain names in gTLDs. The Bylaws further specify that in this role, ICANN's scope is to coordinate the development and implementation of policies for which uniform or coordinated resolution is reasonably necessary to facilitate the openness, interoperability, resilience, security and/or stability of the DNS. **In other words, in the context of ICANN's mission, SSR encompasses ICANN's efforts to contribute to the openness, interoperability, resilience, security and/or stability of the DNS.

But ICANN's scope is further constrained by the requirement that Consensus Policies must be developed through a bottom-up consensus-based multistakeholder process and designed to ensure the stable and secure operation of the Internet's unique names systems.
The Bylaws provide examples of the categories of issues that fall within ICANN's SSR mission. These include:

- *issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, security and/or stability of the Internet, registrar services, registry services, or the DNS*
- *functional and performance specifications for the provision of registrar or registry services*
- *policies reasonably necessary to implement Consensus Policies relating to a gTLD registry or registrar*
- *resolution of disputes regarding the registration of domain names (as opposed to the use of such domain names, but including where such policies take into account use of the domain names); or*
- *restrictions on cross-ownership of registry operators and registrars or resellers and regulations and restrictions with respect to registrar and registry operations and the use of registry and registrar data in the event that a registry operator and a registrar or reseller are affiliated.*

The Bylaws further provide examples of issues that would fall within those categories, including:

- *principles for allocation of registered names in a TLD (e.g., first-come/first-served, timely renewal, holding period after expiration)*
- *prohibitions on warehousing of or speculation in domain names by registries or registrars*
- *reservation of registered names in a TLD that may not be registered initially or that may not be renewed due to reasons reasonably related to (i) avoidance of confusion among or misleading of users, (ii) intellectual property, or (iii) the technical management of the DNS or the Internet (e.g., establishment of reservations of names from registration)*
- *security and stability of the registry database for a TLD*
- *maintenance of and access to accurate and up-to-date information concerning registered names and name servers;*
- *procedures to avoid disruptions of domain name registrations due to suspension or termination of operations by a registry operator or a registrar, including procedures for allocation of responsibility among continuing registrars of the registered names sponsored in a TLD by a registrar losing accreditation; and*
- *the transfer of registration data upon a change in registrar sponsoring one or more registered names.*

***With respect to the DNS root name server system**, ICANN's SSR mission encompasses coordination of the operation and evolution of the DNS root name server system.*

***With respect to numbers**, ICANN's SSR mission is to coordinate the allocation and assignment at the top-most level of Internet Protocol numbers and Autonomous System numbers.*

***With respect to internet protocol standards**, ICANN's SSR mission involves the provision of registration services and open access for registries in the public domain requested by Internet protocol development organizations.*

Taken together, these provisions of the ICANN Bylaws articulate with specificity the scope of ICANN's SSR mission and by definition limit ICANN's authority to process personal data in pursuit of that mission. Access to accurate and up-to-date registrant data is necessary for ICANN to achieve its mission. ICANN may need to process such information in order, for example, to:

- *Inform and support consensus policy development, implementation, and enforcement;*
- *Conduct research in order to identify and address, in accordance with its Bylaws, new, emerging, and evolving SSR issues within its remit;*

- *Respond to and coordinate responses to SSR threats within its remit;*
- *Enable the work of its Supporting Organizations, Advisory Committees, and standards development bodies with respect to SSR issues within ICANN's remit;*
- *Study emerging technologies and national/multi-national policy initiatives in order to educate the ICANN community as well as innovators and policy makers about the impact of such technologies and/or proposals on DNS SSR.*

While it is impossible to specify all of the circumstances in which ICANN may need to process personal registrant data in furtherance of its SSR mission, its processing of personal data in furtherance of its SSR Mission is further constrained in two ways. First, the Bylaws expressly prohibit ICANN from acting outside its mission. Second, ICANN's processing of personal data contained in registrant records is constrained by applicable data protection law. Like every user of registrant data, ICANN is required to limit its processing of personal data in accordance with fair information practice principles of transparency and lawfulness, purpose specification and limitation, accuracy, data minimization, storage limitation, and data security. It may process personal data subject to GDPR and similar legislation only with the consent of the data subject or as necessary in pursuit of its legitimate interest in DNS SSR and in proportion to the interests and fundamental rights and freedoms of the data subject.

Given the rapidly evolving nature of the DNS technology as well as SSR threats, the Board believes that the formulation of Purpose 2 above (Contributing to the maintenance of the security, stability, and resiliency of the Domain Name System in accordance with ICANN's mission) is both necessary and appropriate.

As a result, the EPDP Team recommends the following:

Preliminary Recommendation #22. Purpose 2
The EPDP Team recommends the following purpose be added to the Phase 1 purposes[30], which form the basis of the new ICANN policy:

- Contribute to the maintenance of the security, stability, and resiliency of the Domain Name System in accordance with ICANN's mission.

[30] See EPDP Phase 1 Final Report, recommendation #1 – this concerns an ICANN Purpose for processing gTLD Registration Data - https://gnso.icann.org/sites/default/files/file/field-file-attach/epdp-gtld-registration-data-specs-final-20feb19-en.pdf

4 Next Steps

4.1 Next Steps

The EPDP Team will review and analyze the comments received on this addendum in the next phase of its work and integrate its priority 2 recommendations in the Final Report to be sent to the GNSO Council for review. If adopted by the GNSO Council, the Final Report would then be forwarded to the ICANN Board of Directors for its consideration and, potentially, approval as an ICANN Consensus Policy.