

**ICANN
Transcription
EPDP on the Temporary Specification for gTLD Registration Data
F2F Meeting - Day 1
Wednesday, 16 January 2019 at 18:30 UTC**

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Gina Bartlett: We're going to start with 15 if folks can start pulling that out? Emily's coming right back, Margie just ran to her room. So if folks want to pull out 15; we're going to do 15, 17 and 18 next so why don't you start looking over 15 and then as soon as – there's Emily, we're just waiting for Margie and then we will, I think, go ahead.

((Crosstalk))

Gina Bartlett: Yes, do the introduction. So can we get started? So what we're going to do on 15 is Caitlin's going to give us a bit of an overview and 15, 17 and 18 we need to just look at. These were finalizing the recommendations from the small teams with updates – these all have updates to address the public comments. So we're going to continue where we started this morning.

We're going to take Recommendation 15 on its own and we're going to invite Caitlin is going to give us a bit of an overview of the proposed small team approach and the rationale. Okay, Caitlin.

Caitlin Tubergen: Are we ready? Thanks, Gina. This is Caitlin Tubergen for the transcript. So the small Team A met to discuss Recommendation 15 and agreed to preserve the recommendation of the language with the exception of one of the public comments we received which was from I believe two URS providers who noted that a couple of small tweaks in the temp spec language would really clarify some of their issues.

And so the proposed changes from the URS providers are included below under Item B. So when you're in your small groups if you could carefully read those? And if you have any questions you should refer to the public comment review tool where those comments were submitted and see if you agree to those changes.

Gina Bartlett: Is that clear? Does anybody have questions about that?

((Crosstalk))

Gina Bartlett: Is that clear? Anyone have questions about Recommendation 15? So you need to read the language under the proposed small team approach? Do folks need 10 minutes for this? Okay, 10 minutes to caucus with your group and review and then we'll come back.

And just a gentle reminder, the two questions we're grappling with here is, is there any group that thinks the concerns expressed in the public comments are not sufficiently available – I mean, sufficiently addressed through the proposal? And then is there any group that can't live with the proposed language? Caitlin.

Caitlin Tubergen: One more quick clarification, for the current language versus proposed language, similar to the other small team summaries, which I did, any bracketed language means that is what the URS and UDRP provider is proposing to add to the current language of the temp spec, just in case there's the confusion. Next time we do this I promise not to use brackets.

Gina Bartlett: So, Caitlin, if I read this correctly, we have the initial report language which stands; we have – and then we have two additional sections that are proposed language so there's three paragraphs of proposed language? Is that correct?

Caitlin Tubergen: So good question, Gina. To clarify, so the initial report language is a recommendation that's essentially saying leave the temp spec language as-is. However, the small team met and discussed some proposed amendments to the temp spec language and not to the initial report language. The proposed amendments to the temp spec language, and the various sections are clarified in the language here.

Gina Bartlett: Okay.

Caitlin Tubergen: Are what the groups need to discuss, do they agree to those changes to the temp spec?

Gina Bartlett: Perfect. Okay, so everybody please read – we're going to give you 10 minutes in your caucus to discuss and determine if it's responsive, the proposals are responsive to the public comments and if – your group can live with this language. Okay? So I'm going to start the clock, 10 minutes.

((Crosstalk))

Gina Bartlett: Okay, are we ready to come back? So Caitlin gave me a clarification on the break, so the question before us is Item B, which is the new proposed language for the temp spec. And if we say yes to that, then the initial report language above would have to be edited accordingly to reference the changes in B, so I just needed to clarify that.

So the question on the table is with the, you know, is there anyone who can't – any group, I'm sorry, we're at groups, and if you have a group

spokesperson that would be helpful – is there any groups that can't live with the proposed Language B? Any group, so Noncommercial? Okay, Noncommercial, can you frame your question and we'll see if any reps from the small team can help you understand the rationale.

Milton Mueller: It's not that I don't understand the rationale, I understand it perfectly well, that's why we oppose it. The first thing to understand is that there was not agreement on this recommended change within the small team; there was an agreement to bring it before the plenary precisely because there was not agreement.

The reason we don't agree is – it's twofold really. Number one, read the recommendation. It says, "There is interactions between the UDRP and registration data disclosure." And if we're going to change that it should – we should leave the temp spec in place until we get new policies or new recommendations from the RPM.

Now you're proposing to modify this to say, well, let's actually – let's do change the UDRP procedure right here and now, right? And so these – the recommendation is contradictory to the amendment. And the reason we don't like the amendment is because it's essentially a disclosure or access issue which should be left to the disclosure and access discussion.

We're happy to discuss the reasonableness of the idea of disclosing information to people who are filing UDRPs, we think that's a legitimate concern. But that's an access discussion, that's a disclosure discussion.

And so once again we are being bogged down by attempts to put access into Phase 1 instead of Phase 2 and it really makes no sense to have this recommendation that says wait to (fill) this problem when we either modify the UDRP process or create an access mechanism. And then go on to say but, we're going to solve it now by requiring complainants to get disclosure

during filing a UDRP. So you're actually changing the procedures of the UDRP there.

Another minor point, if you do decide to include this language, and I sure hope we don't, this business of Doe compliance, this is very American legal, I mean, we've got to use generic language that would make sense to people who are now lawyers in the United States who know what a John Doe or Jane Roe filing is; you just can't have that kind of...

Gina Bartlett: Okay. Thanks, Milton. So understanding that there was not, you know, agreement in the small team, I'm just wondering if anyone who – from the small team who was, you know, participated in crafting this language could speak to the concerns from the Non Commercial Stakeholder Group around – that this really – these are really issues that need to be grappled with in Phase 2 and of access? Anyone from the small team able to speak to that? Margie, go ahead.

Margie Milam: Sure. This is Margie. And we disagree with what Milton said. Essentially it's not just a – this is not an access issue and in fact we pointed out that we will talk about the access issue later. There were some comments that related to access. What we simply did was actually address Milton's concern about what does Doe mean? And we replaced the words Doe with Unidentified Respondent which is I think a little more accurate and I think Alan may have been the one that said, "We don't know what Doe means," and so that was the reason we came up with that suggested language.

And so we thought this is an important enough change that shouldn't wait until after the work of the RPM group and that's the reason as part of considering the comments we've made these changes and noted that the access discussions will be, you know, later.

Gina Bartlett: Great. Thank you, Margie. Anything new to add, Diane? And then I'll come to you, Alan.

Diane Plaut: Margie's point, it's also the direction...

Gina Bartlett: You need to be at the microphone...

((Crosstalk))

Diane Plaut: ...the correction – Diane Plaut for the record – the correction of examiner as opposed to provider which is a needed change. So we're really just taking exactly what exists and making it more accurate and clarifying it.

Gina Bartlett: Alan Woods.

Alan Woods: Alan Woods for the record. I'm not going to add very much more to that but just to confirm, I actually had this conversation with one of the providers and (unintelligible) from the MFSD, which is the Italian provider. And I mean, she was just saying that the way the temp spec was written, probably because they didn't have a consultation before the temp spec came out, they were like, this just causes an issue with us. So it is – I think Milton's first point is perfectly well made; that we can't have the recommendation and then recommend a change so yes, there will need to be a slight language update on that.

But I think that the two – well yes but, I mean, what we need to do is I think we just take the pragmatic approach and those suggested changes to the temp spec in order to make it viable for the providers at the moment, I don't see that as being an act officio at all to be perfectly honest, I think it's just changing a process to allow them to continue doing what they do.

Gina Bartlett: David, go ahead.

David Plumb: This is David. Milton, I just want to make sure we're all on the same page here because the proposed language addresses one of the concerns you

brought up so I'm just worried about this sheet being too confusing that we're all a little bit in a muddle. So the only suggestion, as I understand here, is keep the temp spec the way it is with these two minor changes.

Milton Mueller: To the...

David Plumb: Temp spec, yes. Keep the temp spec as it is regarding this language...

((Crosstalk))

David Plumb: No, I'm – the recommendation is to keep the temp spec the way it is, right, with two minor changes, one, getting rid of that Doe reference, right, and the other is providing these extra words around complaint against an unidentified respondent, which is essentially getting rid of Doe. Right, so I just want to make sure Milton – this sheet's confusing...

Milton Mueller: No, I'm not confused. I think you are.

Gina Bartlett: Okay.

Milton Mueller: The...

David Plumb: Okay.

Milton Mueller: The recommendation is saying we are maintaining the temporary specification in relation to URS and UDRP until such time as these are superseded by recommendations from the RPMs PDP Working Group. Okay?

David Plumb: Right.

Milton Mueller: Now you propose...

David Plumb: With the exception of this language Doe.

Milton Mueller: No, it says – forget about Doe, okay, we'll say unidentified registrant, unidentified respondent, now you're saying but we're going to change the procedures of the UDRP...

David Plumb: I don't think it does. Does anybody in the group...

((Crosstalk))

David Plumb: Sorry, go ahead.

Milton Mueller: It says we will change the procedures of the UDRP so that the provider can provide the relevant contact details of the registered name holder after being presented with a complaint. Is that part of the procedure now?

((Crosstalk))

Gina Bartlett: So the answer that wasn't on a mic was yes, that's what's part of the procedure is now and that's what's in the temp spec.

Milton Mueller: The temp spec now says that the – then why do you need to clarify that if that's in the temp spec because the recommendation says you're maintaining the temp spec?

Gina Bartlett: Yes, Alan, oh and then Berry, Amr. Okay so I'm going to go to Alan and then I'll come – Alan and then Amr.

Alan Greenberg: Okay, this sheet lists the current language – it lists the current language and proposed language. The current language is the words – so we are suggesting replacing Doe with something that is meaningful to people around the world. We are suggesting changing in for instance in the first one, "The examiner shall provide relevant contact details to the provider," because it is

not the examiner, the person sitting on the bench who provides the details; it is – we're correcting errors or bad language in the temp spec.

Milton Mueller: Okay, all right.

Alan Greenberg: That's all.

Milton Mueller: That's good.

Alan Greenberg: Now maybe the introduction needs to be reworded to say that, but that's all we're doing.

Gina Bartlett: Right. Does that – Amr and then I think I'm going to check in because I think we have clarification now and we can move on off of Recommendation 15.
Amr.

Amr Elsadr: Thanks, Gina. This is Amr. I'm not entirely sure that the temp spec says that the registrant data will be disclosed to a third party. UDRP and URS are currently designed under the context of open and public Whois so technically there would be no disclosure of this data because it's already public. And now the proposed new language we have in front of us is saying that there will be this new processing activity going to take place where the examiner is going to disclose this data to the third party without us as a team going through the regular, you know, due diligence and working out the legitimate interests and corresponding legal basis which is what we've done for every other processing activity.

So I'm a little puzzled why we're recommending this at this point without going through a very necessary steps first. We've done it for almost every other processing activity and I think we should do that with this...

((Crosstalk))

Gina Bartlett: Okay, Amr.

Amr Elsadr: But again, I think this is an access issue, not that we should be discussing at a later stage of this EPDP, not right now.

Gina Bartlett: So, Amr, Alan Woods is going to respond to your concern because there's a different understanding in the room right now. Go ahead.

Alan Woods: Alan Woods for the record. Hey, Amr, so Appendix D and Appendix E of the temporary specification specifically states that the registry operator in the URS must provide the URS provider with full registration data for each of the specified domain names because there's actually a positive obligation on the registry operator in the text of the temp spec.

So, I mean, that's there, I mean, and when you're talking about the discussion of whether or not we should change that, I mean, yes, that is part and parcel of what we need to look at as well in other recommendations as well, I'm trying to think of the correct one. And I've kind of lost my train of thought to be honest. But, no, it is in the temporary specification, so it's there.

Milton Mueller: They disclose it to the provider of the dispute resolution but not to the complainant, is that right?

Alan Woods: Yes, but we're – it's not talking about the complainant, we're talking about the provider and these are to help the providers.

David Plumb: Let's hear from Alan and see if we can close this thing up. I feel like we are making a big fuss out of some corrections to the temp spec about a couple words like Doe. I just – Alan, can you help out and clarify?

Alan Greenberg: I'll try. It would be interesting to re-legislate the URS and the UDRP and it would be interesting to legislate whether they should continue under GDPR. I

don't think that's what we're here for and to be honest I think it's a losing battle if we were to try.

We've already said we don't want to make major changes in how the UDRP works, and all we're changing here is to correct an error in the temporary spec, which said the examiner will release the data instead of the provider. And we're changing the word Doe complaint to something that's understandable. That's all we're suggesting.

Gina Bartlett: Okay. Alan Woods, like one second.

((Crosstalk))

Alan Woods: Yes, a very small – my point that I forgotten was that the other thing that we are recommending is that the URS provider and ICANN have agreements put in place and part of parcel of that will be completely things like DPAs, so, you know, all these have to be right together not just necessarily in isolation with this one.

Gina Bartlett: So I think we're going to call it. So is there any group that can't live with this modified language, proposed language? And we will need to come back and present to you the introductory phrase which we can do – have staff draft something for you to look at. But is there any group that can't live with the proposal in Section B?

Amr Elsadr: Gina, this is Amr. If I could respond to both Alan Woods and Alan Greenberg, I'd appreciate it.

David Plumb: Yes, go ahead, Amr.

Amr Elsadr: Thanks. This is Amr again. I'm getting a little bit of an echo, I don't know if you guys can hear it or not. But I largely agree with what Alan Greenberg said; we're not supposed to be, you know, re-litigating or redefining the

UDRP or URS, that's far beyond the scope of this EPDP. And as far as what's already in the temp spec in terms of disclosure of data, you know, there's a lot about the temp spec that we've been going through and we've been trying to improve from a GDPR compliance perspective. All I am suggesting is that we need to do this in this instance as well.

Right now we have no – we haven't discussed any legal basis for disclosing data by a UDRP provider or an examiner to another third party. We're talking about two third parties here. And, you know, to just kind of – I don't want to say sneak this in but sort of rush this through the doors during the review of public comments is not something I think we should be doing. We're trying to work through this to make sure that the temporary specification replacement is GDPR-compliant; this does not achieve that purpose.

And as far as this specific example is concerned, as well, again, I stand by the fact that I believe this is an access issue. This is about a third party disclosing data subject's personal data to another third party and this needs to take place within a very different discussion, not the one we're having here. And to the extent that the – like actual revisions of the procedure of whether it's the UDRP or the URS need to take place, I agree that this is not something we should be doing ourselves, it's way too much work plus we don't have the expertise we need. But the whole playing field has changed here.

Like I said earlier, these two procedures were designed based on an open and public Whois; that's changed. Obviously these procedures need to be, you know, changed, they need to be amended in many ways, some of them – mostly because of GDPR compliance. I don't think what we're proposing here does that and I'm not sure how contracted parties or others – other stakeholders believe that we are achieving this. I'd like someone to point that out to me if I am mistaken. Thank you.

Kurt Pritz: Hey, Amr, and everybody else, this is Kurt. So to the extent it's helpful these changes were made by a result of public comment and those public comments were made by a URS and UDRP provider that were describing the process as it exists. And so they had implemented I guess what's in the temp spec but were relating to how things happen now. So that's why they took the word Doe out as an example because Doe doesn't translate across jurisdictions. But also this additional elaboration is a reporting by the URS and UDRP providers for how it's operating now. So all we're doing is we're not attempting to amend anything, we're just providing clarity to the temp spec.

Gina Bartlett: So I think in the room we have support for moving ahead. I think for the Non Commercial Stakeholder Group if as a group you are unable to support this proposed language then we need, you know, you to submit that in writing to the staff to be included in the initial report but maybe you all can speak to one another and determine as a group how you feel about this particular recommendation.

So what I'm going to propose is that we move, David, do 17 and 18 and while people are discussing those we can like modify the intro language to Recommendation 15 and then give that to people to look at maybe in the chat and pick that back up to finalize.

David Plumb: That's a great idea. So let's move on to 17 and 18. Let's do it together. So take 10 minute and do that and I think with Amr's concern on 15 let's figure out what to do with that and see when you look at the package of recommendations if we still need to do something more than that, okay. So what did I say, 17, 18? 17 and 18, if we can get the timer up again and we'll do – Terri if you have a second to put the timer up. Okay, and yes. Yes. So we'll come back and do 17 and 18. Thanks, folks.

END