

Summary Report of Public Comment Proceeding

Priority 2 Policy Recommendations for ICANN Board Consideration from EPDP Phase 2

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Section I: General Overview and Next Steps

This Public Comment proceeding sought to obtain community input prior to ICANN Board action on a subset of final policy recommendations of the Generic Names Supporting Organization Expedited Policy Development Process on the Temporary Specification for gTLD Registration Data (EPDP) – Phase 2. Specifically, this Public Comment proceeding sought input on a set of final recommendations that relate to topics from EPDP Phase 1 (which have also been referred to as “priority 2 topics”); the recommendations related to the System for Standardized Access/Disclosure (“SSAD”) which were also adopted by the GNSO Council as part of the EPDP Phase 2 Final Report were NOT included in this Public Comment proceeding and will be part of a future Public Comment proceeding.

ICANN org has prepared a summary of the submissions received, and this report, along with the full text of the comments received, will be transmitted to the ICANN Board for its consideration. The ICANN Board will then take action on the approved policy recommendations.

Section II: Contributors

At the time this report was prepared, the proceeding received a total of nine (9) submissions. The contributors, both individuals and organizations/groups, are listed below in chronological order by posting date with initials noted. To the extent that quotations are used in the foregoing narrative (Section III), such citations will reference the contributor's initials.

Organizations and Groups:

Name	Submitted by	Initials
Cybersecurity Tech Accord	John Hering	CTA
gTLD Registries Stakeholder Group	Elizabeth Bacon	RySG
Registrar Stakeholder Group	Zoe Bonython	RrSG
Internet Infrastructure Coalition (i2Coalition)	Christian Dawson	i2C
Business Constituency	Steve DelBianco	BC
Intellectual Property Constituency	Brian King	IPC
Non-Commercial Stakeholder Group	Tomslin Samme-Nlar	NCSG
Tucows	Sarah Wyld	Tucows
Article 19	Ephraim Percy Kenyanito	Art. 19

Section III: Summary of Comments

General Disclaimer: This section intends to summarize, broadly and comprehensively, the submissions to this Public Comment proceeding but does not address every specific position stated by each contributor. The preparer recommends that readers interested in specific aspects of any of the summarized submissions, or the full context of others, refer directly to the specific contributions.

Recommendation 19 (Display of information of affiliated and/or accredited privacy/proxy providers)

BC and IPC support Recommendation 19 as written. CTA generally supports Recommendation 19; however, it noted the recommendation does not go far enough when a request is made for the underlying data behind a privacy/proxy registration. Specifically, CTA provides, "there should be a mandate that a registrar collect, maintain and disclose accurate information upon legitimate requests for redacted registrant data of a privacy/provider service." CTA additionally notes that registrations using a privacy/proxy service should be clearly flagged as such, consistent with the ICANN Board-approved recommendation from the Privacy and Proxy Services Accreditation Issues Working Group (PPSAI). BC and IPC also urge ICANN org to recommence implementation of the PPSAI recommendations.

RySG, i2C, Art. 19 and NCSG all expressed concerns with Recommendation 19.

RySG expressed concerns over the publication of pseudonymized email addresses, noting, "the publication of a pseudonymized email remains the publication of personal data as it is the publication of an email that refers to, and is capable of, identifying a specific data subject." RySG also expressed concern over the feasibility of implementing this recommendation and notes "ICANN policy must not create a situation where contractual expectations are not based on realistic expectations, put parties at additional legal risk, or are impossible to implement."

Due to legal risks and the aforementioned implementation concerns, RySG does not support the inclusion of mandatory publication. Lastly, RySG urges the ICANN Board to instruct ICANN org to report any incompatibility between this recommendation and the privacy/proxy recommendations back to the GNSO Council.

Art. 19 also expressed concerns over the publication of pseudonymized email addresses, noting, while “it may be difficult to identify a registrant on the basis of a single registered domain name, the fact that multiple domain names registered by the same person can be linked to each other increases the potential that the registrant can be easily identified. This threat to anonymity not only constitutes a threat to registrants’ privacy, but may also contribute to a chilling effect on individuals that must disseminate information anonymously, particularly those that are marginalised or under threat by government actors for their speech.” Accordingly, Art. 19 recommends a mandatory prohibition against publication of a pseudonymized email address, unless the registrant has provided explicit consent to the publication.

NCSG expressed similar concerns as Art. 19, noting, “a unique identifier for a data subject constitutes personally identifiable information, and should not be published for indiscriminate access unless the registrant agrees.” NCSG also notes Recommendation 19 should not be implemented until EPDP Phase 2A completes its work.

Recommendation 20 (Redaction of City Field)

CTA, RySG, Tucows, i2C, IPC, and BC all support Recommendation 20 as written. CTA and i2C note the change from "MUST" to "MAY" is unlikely to have any significant practical effect because “(i) the status quo for contracted parties is currently to redact the field, and (ii) many contracted parties resisted even the permissive change to ‘MAY.’” Accordingly, CTA and i2C recommend the mandatory publication of the city field.

RySG and Tucows support Recommendation 20, noting, the contracted party, as the controller, is the appropriate entity to determine whether the city field should be redacted or disclosed.

Art. 19 and NCSG oppose the update from “MUST” to “MAY” in Recommendation 20. NCSG notes, “legal guidance during phase 1 made it clear that for a natural person, the city of residence is personally identifiable information. For many individual internet users, this would strip away the intended privacy protection of the GDPR by making it relatively easy to combine the city field with other published information, such as registrant name, for anyone to be able to identify and locate the registrant, regardless of whether they had a legitimate interest or legal basis.” NCSG also notes the city field should not be published indiscriminately; instead, third parties may request the disclosure of this information through the SSAD. Art. 19 notes, “the public availability of registrant location data compromises freedom of expression and information.”

Recommendation 21 (Data Retention)

IPC and BC support Recommendation 21 as written.

CTA supports the establishment of a data retention period, noting, however, the recommendation “too narrowly describes the standard for third-party requests during this retention period as ‘purposes other than TDRP’ (the purpose for which data would currently be processed by the registrar). The correct standard is the broader ‘purposes other than those for which the data was collected,’ which includes TDRP, among others (GDPR Art. 5.1(b)).”

i2C generally supports Recommendation 21, but asks for clarification “on ICANN Compliance being deemed merely a Requestor, wherein many can and have concluded ICANN to be a controller or a joint controller.” i2C notes that clarification from ICANN with respect to the question of controllership would be beneficial to the community.

RrSG and Tucows both note the language of Recommendation 21 makes clear that only data required for the purposes of the Transfer Dispute Resolution Policy (TDRP) must be retained, and it is essential that any policy implementation keeps the data element retention requirement limited to TDRP-required data for the purposes of data minimization and purpose limitation.

RySG cautions “insofar as ICANN ‘obligations’ are concerned, only that data retained for a specific purpose (as enumerated by ICANN and as included in the final report) and as such, as is communicated to the relevant data subjects upon collection, shall be subject to any ICANN contractual compliance monitoring and/or enforcement.” RySG also notes that processing data beyond the specified purpose is in the controller’s sole discretion, and, accordingly, “ICANN compliance cannot claim any authority over such processing (or the denial of any request for such processing) including purporting enforcement, be that via compliance notice, inquiry or similar effort.”

Art. 19 opposes Recommendation 21, noting, “data retention ought to be practiced only when it is necessary to do so, as keeping large troves of data poses risk in managing its security and confidentiality. Given that the EPDP is an attempt to ensure compliance with the GDPR, it is important to note that mandatory mass data retention was deemed to be unlawful.” Art. 19 also recommends the recommendation be redrafted “to ensure that all DNS actors that handle registrant data are transparent and accountable to registrants as to how they handle the data retained and should notify them and provide remedies in case of any data breaches or leaks.”

NCSG does not support Recommendation 21 because it allows contracted parties to retain data elements for long periods than is necessary.

Recommendation 22: Purpose 2

CTA, BC, and IPC all support Recommendation 22; however, all three groups note the third-party purposes from Phase 2, Recommendation 7, must also be added to the EPDP Team Phase 1 purposes and be included as the basis of ICANN’s new policy. CTA specifically notes, “the NIS 2 Directive explicitly declares that the 3rd party purposes represent a defined legitimate interest.”

For ease of reference, Recommendation 7 from Phase 2 provides: “Requestors MUST submit data disclosure requests for specific purposes such as but not limited to: (i) criminal law

enforcement, national or public security, (ii) non law enforcement investigations and civil claims, including, intellectual property infringement and UDRP and URS claims, (iii) consumer protection, abuse prevention and network security and (iv) obligations applicable to regulated entities. Requestors MAY also submit data verification requests on the basis of Registered Name Holder (RNH) consent that has been obtained by the Requestor (and is at the sole responsibility of that Requestor), for example to validate the RNH's claim of ownership of a domain name registration, or contract with the Requestor."

While the RySG does not explicitly object to Recommendation 22, it expressed concerns, noting, "we do not feel that this purpose qualifies as a legal "Purpose" as defined in the GDPR." RySG also notes it does not believe the changes to the original Purpose 2 "resolve the EDPB's previously stated concerns regarding conflating ICANN's purposes with those of third parties."

NCSG notes the revision is "an improvement upon the Phase 1 definition, which falsely implied that third party disclosure is one of the purposes of ICANN's collection of registration data, rather than a byproduct of it."

Section IV: Analysis of Comments

General Disclaimer: This section intends to provide an analysis and evaluation of the submissions along with explanations regarding the basis for any recommendations provided within the analysis.

Many concerns noted in the comments were also raised and considered during the EPDP Team's Phase 1 and Phase 2 deliberations and/or were already flagged in the [comments](#) received on the EPDP Team's Phase 2 Addendum to its Initial Report. In addition, the majority of the noted concerns and issues were the subject of lengthy debates during the EPDP Team's [Phase 1](#) and [Phase 2](#) work, and the recommendations on these topics represent carefully-crafted compromises. Specifically, the topics of purposes for processing gTLD registration data, the processing of gTLD data (both publication/redaction and retention) were discussed at length by the EPDP Team. For further background and information on the discussions and subsequent compromises within the EPDP Team on the above topics, please refer to the body of the Final Report.

The comments regarding the publication of pseudonymized data will be flagged to the EPDP Phase 2A team for its consideration. It should be noted that the priority 2 recommendation states that "the full privacy/proxy RDDS data MAY also include a pseudonymized email" (emphasis added), this is not a requirement.

The comments related to the implementation of PPSAI recommendations have been forwarded to the responsible ICANN org team. The comments related to the accuracy of data will be provided to the Accuracy Scoping Team, when formed.

Several comments relate to the SSAD; ICANN org Policy Development Support team recommends providing comments regarding the SSAD during the upcoming Public Comment proceeding on the SSAD recommendations.