**NOTE ONLY SMALL TEAM MEMBERS ARE EXPECTED TO EDIT / COMMENT THIS DOCUMENT AT THIS STAGE - all non-small team member / comments edits will be removed.**

|  |
| --- |
| **Section II: Mission, Purpose, and Deliverables** |
| **Mission & Scope:** |

**Background**

On 17 May 2018, the ICANN Board of Directors (ICANN Board) adopted the Temporary Specification for generic top-level domain (gTLD) Registration Data (“Temporary Specification”) pursuant to the procedures for the establishment of temporary policies in ICANN’s agreements with Registry Operators and Registrars. The Temporary Specification provides modifications to existing requirements in the Registrar Accreditation and Registry Agreements to help bring them into compliance with the European Union’s General Data Protection Regulation (GDPR). Per the procedure for Temporary Policies as outlined in the Registry Agreement and Registrar Accreditation Agreement, following adoption of the temporary specification, the Board “shall immediately implement the Consensus Policy development process set forth in ICANN’s Bylaws”. Per the requirements of the procedure for Temporary Policies, this Consensus Policy development process on the temporary specification would need to be carried out within a one-year period as the Temporary Specification can only remain in force for up to 1 year, from the effective date of 17 May 2018.

At its meeting on 19 July 2018, the GNSO Council [unanimously] initiated an Expedited Policy Development Process on the Temporary Specification for gTLD Registration Data and adopted this charter for the EPDP Team to deliberate the issues of topic X……….

**Mission and Scope**

This EPDP Team is being chartered to determine if the Temporary Specification for gTLD Registration Data should become an ICANN Consensus Policy, as is or with modifications, while complying with the GDPR and other relevant privacy and data protection law. As part of this determination, the EPDP Team is, at a minimum, expected to consider the following elements of the Temporary Specification and answer the following charter questions. The EPDP Team shall consider what subsidiary recommendations it might make for future work by the GNSO which might be necessary to ensure relevant Consensus Policies, including related to WHOIS data, are reassessed to become consistent with applicable law.

Terms of the Temporary Specification

Part 1: Purposes for Processing Registration Data

a) Purposes outlined in Sec. 4.4.1-4.4.13 of the Temporary Specification:

a1) Are the purposes enumerated in the Temporary Specification valid and legitimate?

a2) Do those purposes have a corresponding legal basis?

a3) Should any of the purposes be eliminated or adjusted?

a4) Should any purposes be added?

Note: Questions under a) are gating questions for the EPDP Team’s discussion of access, in that they must be answered before work on a standardized access model can commence. They are gating because establishing purposes will inform decisions about how personal registration data is processed. Because providing access to non-public personal registration data is a processing activity, there must be a legitimate purpose(s) with a corresponding legal basis(es) established prior to granting such access. Further, as pointed out by the European Data Protection Board (EDPB) (Jelinik to Marby, July 5, 2018), the EPDP WG should recognize the distinction between ICANN’s purposes for processing registration data, and the purposes which third parties may present to obtain the disclosure of data.

Part 2: Required Data Processing Activities

b) Collection of registration data by registrar:

b1) What data should registrars be required to collect for each of the following contacts: Registrant, Tech, Admin, Billing?

b2) What data is collected because it is necessary to deliver the service of fulfilling a domain registration, versus other legitimate purpose as outlined in part (A) above?

B4) How shall legitimacy of collecting data be defined (at least for data from personal data collected from European registrants and others in jurisdictions with data protection law)?

B5) Under the purposes identified in Section A, is there legal justification for collection of these data elements, or a legal reason why registrars should not continue to collect all data elements for each contact

Note: Questions under b) are gating questions for the EPDP Team’s discussion of access, in that they must be answered before work on a standardized access model can commence. They are gating because the answers to these questions will establish a baseline set of data that is collected for each domain name registration, which will in turn inform what data is made public, as opposed to only made available to accredited users.

c) Transfer of data from registrar to registry:

c1) What data should registrars be required to transfer to the registry?

C2) What data is required to fulfill the purpose of a registry registering and resolving a domain name?

c2) What data is transferred to the registry because it is necessary to deliver the service of fulfilling a domain registration versus other legitimate purposes as outlined in part (a) above?

c3) Is there a legal reason why registrars should not be required to transfer data to the registries, in accordance with previous consensus policy on this point?

c4) Should registries have the option to require contact data or not?

C5) Is there a valid purpose for the registrant contact data to be transferred to the registry, or should it continue to reside at the registrar?

Note: Questions under c) are gating for the EPDP Team’s discussion of access in that they must be answered before work on a stand ardized access model can commence. They are gating because the answers to these questions will determine which parties hold registration data, and therefore are able to provide access to that data.

d) Transfer of data from registrar/registry to data escrow provider:

d1) Should there be any changes made to the policy requiring registries and registrars to transfer the data that they acquire to the data escrow provider?

d2) Should there be any changes made to the procedures for transfer of data from a data escrow provider to ICANN Org?

e) Transfer of data from registrar/registry to ICANN:

e1) Should there be any changes made to the policy requiring registries and registrars to transfer the domain name registration data that they acquire to ICANN Compliance, when required/requested?

f) Publication of data by registrar/registry:

f1) Should there be any changes made to registrant data that is required to be redacted? If so, what data should be published in a freely accessible directory?

F2) Should standardized requirements on registrant contact mechanism be developed?

F3) Under what circumstances should third parties be permitted to contact the registrant, and how should contact be facilitated in those circumstances?

Note: Questions under f) are gating for the EPDP Team’s discussion of access in that they must be answered before work on a standardized access model can commence. They are gating because the answers to these questions will determine what data is made available through a public Registration Data Directory Service (RDDS) record, as opposed to only made available to accredited users.

g) Data retention:

g1) Should adjustments be made to the data retention requirement (life of the registration + 2 years)?

g2) If not, are changes to the waiver process necessary?

g3) In light of the European Data Protection Board (EPDB) letter of 9 July 2018, what is the justification for retaining registration data beyond the term of the domain name registration?

h) Applicability of Data Processing Requirements

h1) Should Contracted Parties be permitted or required to differentiate between registrants on a geographic basis?

h2) Is there a legal basis for Contracted Parties to differentiate between registrants on a geographic basis?

h3) Should Contracted Parties be allowed or required to treat legal and natural persons differently, and what mechanism is needed to ensure reliable determination of status?

h4) Is there a legal basis for CPs to treat legal and natural person differently?

H5) What are the risks associated with differentiation of registrant status as legal or natural person across multiple jurisdictions? (See Jelinek to Marby letter of 8 July 2018).

i) Transfer of data from registry to Emergecy Back End Registry Operator (EBERO)

i1) Consider that in most EBERO transition scenarios, no data is actually transferred from a registry to an EBERO. Should this data processing activity be eliminated or adjusted?

J. Temporary Specification and Reasonable Access

j1) Should existing requirements in the Temporary Specification remain in place until a model for access is finalized?

1. If so:
2. Under Section 4 of Appendix A of the Temporary Specification, what is meant by “reasonable access” to Non-Public data?
3. What criteria must Contracted Parties be obligated to consider in deciding whether to disclose Non-Public Registration data to an outside party requestor (i.e. whether or not the legitimate interest of the outside party seeking disclosure are overridden by the interests or fundamental rights or freedoms of the registrant)?
4. If not:
5. What framework(s) for disclosure could be used to address (i) issues involving abuse of domain name registrations, including but not limited to consumer protection, investigation of cybercrime, DNS abuse and intellectual property protection, (ii) addressing appropriate law enforcement needs, and (iii) provide access to registration data based on legitimate interests not outweighed by the fundamental rights of relevant data subjects?

J2) Can the obligation to provide “reasonable access” be reconciled with the objective of avoiding, to the extent possible, an unharmonized approach to third-party access to registration data, , without the implementation of a community-wide model for access or similar framework which takes into account at least the following elements:

1. What outside parties / classes of outside parties, and types of uses of Non-Public Registration data by such parties, fall within legitimate purposes and legal basis for such use?
2. Should such outside parties / classes of outside parties be vetted by ICANN in some manner and if so, how?
3. If the parties should not be vetted by ICANN, who should vet such parties?
4. In addition to vetting the parties, either by ICANN or by some other body or bodies, what other safeguards should be considered to ensure disclosure of Non-Public Personal Data is not abused?

Part 3: Data Processing Terms -- To be concluded during the initial stage of the EPDP work, as part of the Temporary Specification review and initial report.

k) ICANN's responsibilities in processing data

k1) For which data processing activities undertaken by registrars and registries as required by the Temporary Specification does ICANN determine the purpose and means of processing?

k2) ICANN as a data controller has specific duties to the registrant or data subject under applicable law. What other other legal or other obligations should be noted by this EPDP WG in its analysis, including any duties that ICANN might have in its role as administrator of a finite resource in the Internet governance sphere?

l) Registrar's responsibilities in processing data

l1) For which data processing activities required by the Temporary Specification does the registrar determine the purpose and means of processing?

L2) Identify a data controller and data processor for each type of data.

L3) Which registrant data processing activities required by the Temporary Specification do registrars undertake solely at ICANN's direction?

L4) What are the registrar's responsibilities to the data subject with respect to data processing activities that are under ICANN’s control?

m) Registry's responsibilities in processing data

m1) For which data processing activities required by the Temporary Specification does the registry determine the purpose and means of processing?

m2) Which data processing activities required by the Temporary Specification does the registry undertake solely at ICANN's direction?

m3) Are there processing activities that registries may optionally pursue?

m4) What are the registry's responsibilities to the data subject based on the above?

Part 4: Updates to Other Consensus Policies

n) URS

n1) Should Temporary Specification language be confirmed, or are additional adjustments needed?

o) UDRP

o1) Should Temporary Specification language be confirmed, or are additional adjustments needed?

p) Transfer Policy

p1) Should Temporary Specification language be confirmed or modified until a dedicated PDP can revisit the current transfer policy?

p2) If so, which language should be confirmed, the one based on RDAP or the one based in current WHOIS?”

q) Sunsetting WHOIS Contractual Requirements

q1) After migration to RDAP, when can requirements in contracts to use WHOIS protocol be eliminated? Q2) If EPDP Team’s decision includes a replacement directory access protocol, such as RDAP, when can requirements in contracts to use WHOIS protocol be eliminated?

System for Standardized Access to Non-Public Registration Data

Work on this topic shall begin once the gating questions above have been answered and finalized in preparation for the Temporary Specification initial report. The threshold for establishing “answered” for the gating questions shall be consensus of the WG and confirmation by the GNSO Council

(a) Purposes for Accessing Data – What are the unanswered policy questions that will guide implementation?

a1) Under applicable law, what are legitimate purposes for third parties to access registration data?  
a2) What legal bases exist to support this access?  
a3) What are the eligibility criteria for access to Non-Public Registration data?

a4) Do those parties/groups consist of different types of third-party requestors?  
a5) What data elements should each user/party have access to based on their purposes?

A6) To what extent can we determine a set of data elements and potential scope (volume) for specific third parties and/or purposes?

A7) How can RDAP, that is technically capable, allow Registries/Registrars to accept accreditation tokens and purpose for the query? Once accreditation models are developed by the appropriate accreditors and approved by the relevant legal authorities, how can we ensure that RDAP is technically capable and is ready to accept, log and respond to the accredited requestor’s token?

c) Credentialing – What are the unanswered policy questions that will guide implementation?

c1) How will credentials be granted and managed?

c2) Who is responsible for providing credentials?

c3) How will these credentials be integrated into registrars’/registries’ technical systems?

d) Terms of access and compliance with terms of use – What are the unanswered policy questions that will guide implementation?

d1) What rules/policies will govern users' access to the data?

d2) What rules/policies will govern users' use of the data once accessed?

d3) Who will be responsible for establishing and enforcing these rules/policies?

d4) What, if any, sanctions or penalties will a user face for abusing the data, including future restrictions on access or compensation to data subjects whose data has been abused in addition to any sanctions already provided in applicable law?

d5) What kinds of insights will CPs have into what data is accessed and how it is used?

d6) What rights do data subjects have in ascertaining when and how their data is accessed and used?

D7) How can a third party access model accommodate differing requirements for data subject notification of data disclosure?

Annex: Important Issues for Further Community Action

Following the EPDP WG primary focus on confirming, amending, rejecting or replacing the Temporary Specification, and resolving the gating questions identified above, the WG shall turn its attention to the items included in the Temporary Specification Annex, listed as “Important Issues for Further Community Action.” These include but are not limited to the standardized access model referenced above.

The EPDP Team should track any ongoing discussions as they relate to GDPR and its applicability in the ICANN context and potential impact on the Temporary Specification. It may also wish to consider forming sub-groups to work on issues or sub-topics in order to streamline its work and discussions, provided those sub-groups are subject to the gating questions.

The ICANN Board is required to reconfirm the Temporary Specification every 90 days from their adoption and enforcement of the Temporary Specification , for a period of no more than 12 months or upon the confirmation, or not, of the Temporary Specification as consensus policy--whichever event comes first. In the event that the ICANN Board, amends the Temporary Specification as part of the confirmation process, the EPDP Work Team will review the Charter for continued applicability. In the event that the EPDP Work Team determines that the Charter requires amendment, the Chair of the EPDP Work Team will inform the GNSO Council of the recommended changes to the Charter and any impact on the timeline. Where the impact is considered substantive and expected to compromise the ability of the EPDP Work Team to meet published timelines the GNSO Council will discuss with the ICANN Board with a view to determining possible solutions for continuing the work.

|  |
| --- |
| **Objectives & Goals:** |

To develop, at a minimum, an Initial Report and a Final Report regarding the Team’s recommendations on issues relating to the Temporary Specification for gTLD Registration Data as well as regarding the Team’s recommendations for a System for Accredited Access to Non-Public Registration Data, pursuant to the processes described in Annex A and A-1 of the ICANN Bylaws and the GNSO Expedited PDP Manual. Work on recommendations for a System for Accredited Access to Non-Public Registration Data, should not commence until all gating questions have been answered. Similarly, delivery of the Final Report on the Team’s recommendations on issues relating to the Temporary Specification for gTLD Registration Data to the GNSO Council and subsequently the ICANN Board (before 25 May 2019) should not be held up by work that may still be ongoing in relation to the Team’s recommendations for a System for Accredited Access to Non-Public Registration Data.

Upon publication for public comment, the Initial Report should be submitted to the the European Data Protection Board or other relevant DPAs to request feedback on the applicability of the law in relation to the proposed recommendations, particularly those that may carry over from Temporary Specification to Consensus Policy recommendations to the ICANN Board.

|  |
| --- |
| **Deliverables & Timeframes:** |

The first deliverable of the EPDP Team shall be a triage document of the Temporary Specification, which includes items that have the Full Consensus support of the EPDP Team that these should be adopted as is (with no further discussion or modifications needed). These items need to be:

* In the body of the Temporary Specification not including the Annex
* Within the "picket fence" (contract clauses defining what can be specified in a Consensus Policy)
* Not obviously in violation of the GDPR / Assumed to be compliant with GDPR [Presumed to be legal according to the members’ best knowledge of GDPR]
* Consistent with ICANN’s Bylaws

Deliberations of this first deliverable should include at least one round of elimination of clauses, if appropriate, and a second round of Full Consensus approval of a whole set of clauses.

The second deliverable shall be the Initial Report which will include the items that received full consensus support per the triage document as well as all other items of the Temporary Specification (not including the Annex) that were considered and deliberated upon, followed by a Final Report following review of public comments. Per the illustrative timeline in section II of the charter, this implies that the Initial Report on the items related to the Temporary Specification (excluding the annex) is expected to be published for public comment shortly after ICANN63 (October 2018) and the Final Report delivered to the GNSO Council for its consideration by the end of January / beginning of February 2019.

The third deliverable of the EPDP Team shall be an Initial Report outlining the proposed model of a system for providing accredited access to non-public registration data, where items having Full Consensus of the group are:

* Within the "picket fence" (contract clauses defining what can be specified in a Consensus Policy)
* Not obviously in violation of the GDPR / Assumed to be compliant with GDPR [Presumed to be legal according to the members’ best knowledge of GDPR]
* Consistent with ICANN’s Bylaws

Followed by a Final Report following review of public comments. The Team shall not commence work on the aforementioned third deliverable of an Initial Report outlining the proposed model of a system for providing accredited access to non-public registration data until all gating questions have been answered.

The Team shall respect the timelines and deliverables as outlined in Annex A and A-1 of the ICANN Bylaws and the EPDP Manual. As per the GNSO EPDP Working Group Guidelines, the Team shall develop a work plan that outlines the necessary steps and expected timing in order to achieve the milestones of the EPDP as set out in Annex A and A-1 of the ICANN Bylaws and the EPDP Manual and submit this to the GNSO Council. Any significant updates to the work plan are expected to be communicated in a timely manner to the GNSO Council with an explanation as to why the work plan needed adjustment.