
Public Comment Summary Report

EPDP Phase 2A Policy Recommendations for ICANN Board Consideration

Open for Submissions Date:

Tuesday, 23 November 2021

Closed for Submissions Date:

Thursday, 13 January 2022

Summary Report Due Date:

Thursday, 27 January 2022

Category: Policy

Requester: ICANN Board

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Open Proceeding Link:

<https://www.icann.org/en/public-comment/proceeding/epdp-phase-2a-policy-recommendations-for-icann-board-consideration-23-11-2021>

Outcome:

During this Public Comment proceeding, seven organizations and groups provided comments on the EPDP Phase 2A Final Report. In addition to this summary, the full text of the comments will be transmitted to the ICANN Board for its consideration prior to its vote on the EPDP Phase 2A recommendations.

The ICANN Board values the opportunity to receive comments from the ICANN Community and thanks those who participated in this proceeding.

Section 1: What We Received Input On

The ICANN Board will soon consider the EPDP Phase 2A Final Report, which includes four policy recommendations. Prior to the Board's consideration of this Final Report, ICANN org sought input on the EPDP Team's Phase 2A recommendations, which relate to the topics of 1) the differentiation of legal vs. natural persons' registration data and 2) the feasibility of unique contacts to have a uniform anonymized email address.

An abbreviated version of the four recommendations is provided below:

1. A field or fields MUST be created to facilitate differentiation between legal and natural person registration data and/or if that registration data contains personal or non-personal data.

2. Contracted Parties who choose to differentiate based on person type SHOULD follow the guidance included in the report.
3. If a GDPR Code of Conduct is developed, the guidance to facilitate differentiation between legal and natural person data SHOULD be considered within ICANN by the relevant controllers and processors.
4. Contracted Parties who choose to publish a registrant-based or registration-based email address in the publicly accessible RDDS should evaluate the legal guidance obtained by the EPDP Team on this topic.

ICANN Board welcomes this input on the four recommendations from the [EPDP Phase 2A Final Report](#). Per the Bylaw requirements, the ICANN Board will now consider whether or not these recommendations are in the best interests of the ICANN community and ICANN org.

Section 2: Submissions

Organizations and Groups:		
Name	Submitted by	Initials
At-Large Advisory Committee	Alan Greenberg	ALAC
Business Constituency	Business Constituency	BC
Registrar Stakeholder Group	Zoe Bonython	RrSG
Intellectual Property Constituency	Brian King	IPC
Registries Stakeholder Group	Registries Stakeholder Group	RySG
Tucows Inc	Sarah Wyld	Tucows
Messaging, Malware and Mobile Anti-Abuse Working Group (M3AAWG)	Amy Cadagin	M3AAWG
Individuals:		
Name	Affiliation (if provided)	Initials
N/A		

Section 3: Summary of Submissions

ALAC notes that Phase 2A of the EPDP was triggered due to the dissatisfaction of the ALAC and other groups with EPDP Phase 1 and Phase 2 not addressing two critical issues: (i) the differentiation of legal vs. natural persons, and (ii) the lack of means to contact registrants. ALAC reiterates the positions it took in its Minority Statement to the Phase 2A Final Report, and notes that the minority statements represent 11 of the 24 EPDP Members and 5 of the 9 groups represented on the EPDP. ALAC also calls the Board’s attention to the minority statements of BC, GAC, IPC, and SSAC.

BC and IPC issued a joint comment, where both groups note they support both the privacy rights and the protective intent of the GDPR. However, BC and IPC go on to note that the EPDP Team was directed to “preserve the WHOIS database to the greatest extent possible” while complying with privacy law; in light of this, BC and IPC note the resulting policy recommendations exceed what is necessary to protect the data of natural persons. BC and IPC go on to note that optional differentiation of legal vs. natural persons is inadequate, and ICANN policy must require such differentiation in order to ensure the security and stability of the global domain name system. By not requiring a mandatory distinction between the data of legal vs. natural persons, BC and IPC believe the Phase 2A recommendations result in a significant number of registration records being redacted or otherwise unavailable, which unnecessarily inhibits online anti-abuse efforts. Further, the BC and IPC note the EPDP Phase 2A recommendation declining to require a unique anonymized email address for unique contacts also inhibits anti-abuse efforts by applying an overly conservative approach that exceeds what is necessary to comply with applicable law.

BC and IPC also note that “while the EPDP Phase 2A Chair designated the Phase 2A recommendations as supported by ‘consensus’, the BC and IPC restate that they do not support the Phase 2A outcomes, and also do not support a ‘consensus’ designation.”

RrSG and Tucows both note their support of the Phase 2A recommendations overall. RrSG and Tucows believe the Phase 2A recommendations are to the benefit of the stability and security of the internet and are conscious that some work in the Registration Data Implementation Review Team is dependent on information from the Phase 2A recommendations in order to progress its work.

RySG questions the underlying utility, use and justification/necessity for the creation of the additional data element as foreseen in Recommendation #1, and, accordingly, urges the Board to consider the lack of clarity as to what benefit such a data element achieves. RySG also notes the implementation issues associated with the addition of this data element, since the definition of the data element is within the remit of the IETF and not ICANN.

RySG notes the guidance referred to Recommendation #2 is simply a restatement of relevant legal principles, and, accordingly, offers little actual guidance on how the principles are to be implemented or applied. The RySG notes the guidance is correct but believes it is ultimately unhelpful for contracted parties. RySG notes that while the guidance referred to in Recommendation #2 is a helpful starting point for a GDPR Article 40 Code of Conduct, it would need to be far more detailed than what is provided in Recommendation #3.

M3AAWG notes that it is in the public interest for anti-abuse actors to be able to contact and obtain information about domain name registrants to address cybercrime, phishing, botnets, etc. The access to registration data for bona fide anti-abuse actors must be effective, functional, timely, and efficient to ensure an appropriate and effective response to the abuse. M3AAWG goes on to note that the Whois system is necessary to ensure the future safe and secure operation of the internet, and, accordingly, a robust Whois system and the security, stability, and resiliency of the DNS are linked.

M3AAWG notes that uniformity is very important to cybersecurity specialists, law enforcement actors, and data subjects. Accordingly, M3AAWG notes that all Whois or registration data policies should use clear, prescriptive language and avoid voluntary clauses. It is “only by

setting standards and making them requirements, end users, cybersecurity specialists, and contracted parties have clarity on what happens to data and how it can be accessed.”

Section 4: Analysis of Submissions

These comments, similar to comments provided by the EPDP Phase 2A Team members during its deliberations, the comments received in response to the EPDP Phase 2A Team’s Initial Report, and the positions demonstrated in the minority statements to the Final Report, represent a clear divergence of views.

In his Chair’s statement, which begins on p.13 of the Final Report, Keith Drazek notes the importance of reading all minority statements comprehensively. Specifically, Keith notes, “While this Final Report and its recommendations have the consensus support of the EPDP 2A Team, it’s important to note that some groups felt that the work did not go as far as needed, or did not include sufficient detail, while other groups felt that certain recommendations were not appropriate or necessary. Additionally, during the final stage of our work, some groups would have preferred an opportunity to assign more granular consensus-level designations to component parts of the recommendations. In this context, all readers of the EPDP 2A Final Report should also read the minority statements submitted by each group, which have been appended and are part of the Final Report and historical record of our work.

[. . .]

This Final Report constitutes a compromise that is the maximum that could be achieved by the group at this time under our currently allocated time and scope, and it should not be read as delivering results that were fully satisfactory to everyone. This underscores the importance of the minority statements in understanding the full context of the Final Report recommendations.”

A short summary of the specific divergence from the Public Comments received is provided below, on a recommendation-by-recommendation basis for ease of reference.

Recommendation 1 (New RDDS field)

RrSG and Tucows support Recommendation 1.

RySG questions the underlying utility, use and justification/necessity for the creation of the legal/natural and personal data/no personal data additional elements.

ALAC, BC, IPC, and M3AAWG note that the use of the fields contemplated by Recommendation 1 should be mandatory and uniform across all contracted parties.

Recommendation 2 (Optional Legal v. Natural Guidance)

RrSG, Tucows, and RySG support the optional nature of Recommendation 2. RySG notes, however, that while the guidance from Recommendation 2 is an accurate summary of legal principles, it is unlikely to be a helpful or practical resource for Contracted Parties.

ALAC, BC, IPC, and M3AAWG note that the differentiation of legal vs. natural persons should be mandatory and not optional, and Recommendation 2 does not go far enough. BC, IPC, and M3AAWG note the importance of uniform and mandatory requirements for contracted parties, as this will contribute to a secure, stable, and resilient domain name system.

Recommendation 3 (Code of Conduct)

RrSG and Tucows support Recommendation 3.

RySG notes that Recommendation 3 is a helpful starting point but would not equate to a comprehensive and complete GDPR Article 40 Code of Conduct.

M3AAWG notes that while the creation of a code of conduct is useful, a baseline code of conduct that would apply to all Contracted Parties is necessary to establish a functional and uniform system. Uniform and predictable rules that apply to everyone are important for end users, cybersecurity specialists, and Contracted Parties.

Recommendation 4 (Pseudonymized email addresses)

RrSG, RySG, and Tucows support Recommendation 4.

ALAC notes that Phase 2A ultimately failed to address the important issue of contacting registrants.

BC and IPC note that the EPDP Phase 2A Team declined to require a unique anonymized email address for unique contacts, and, consequently, will inhibit anti-abuse efforts by applying an overly conservative approach that exceeds what is required by relevant data protection law.

M3AAWG notes that many anti-abuse actors struggle with the website-based contact forms that are currently offered and, for that reason, support mandatory unique anonymized email addresses. M3AAWG goes on to note that pseudonymized registrant identifiers, which do not expose personally-identifiable information, are important for both correlation and critical data analysis purposes.

Section 5: Next Steps

The full text of the comments received, along with this summary, will be transmitted to the ICANN Board for its consideration.

Per the ICANN Bylaw requirements, the ICANN Board will now consider whether or not these recommendations are in the best interests of the ICANN community and ICANN org.