

Registries Stakeholder Group Statement



EPDP Phase 2A Policy Recommendations for ICANN Board Consideration

Date statement submitted¹: **13 January 2022**

(This is a copy of the comment submitted via the ICANN Public comment platform.)

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

Background²

Prior to the Board's consideration of this Final Report, ICANN org is seeking 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.

Report [EPDP Phase 2A Final Report](#) .

RySG comments on related issues

- [RySG Comment on the EPDP Phase 2A Initial Report](#) (July 2021)

¹ This is a copy of the comment submitted via the ICANN Public comment platform.

² Background: intended to give a brief context for the comment and to highlight what is most relevant for RO's in the subject document – it is not a summary of the subject document.

Registries Stakeholder Group comment*

Summary of Submission:

The RySG would like to thank the Board for this opportunity and again would like to affirm our belief that the multi-stakeholder model is at its best when it seeks to enable the contracted parties to comply with laws as it may apply to them individually, across the global legislative landscape. We submit that we continue to earnestly support ICANN and its mission, and we do urge the Board, especially in light of recent legislative lobbying and activism, that the ICANN community is at its most effective, when we create policy that does not seek to enforce individual laws, by individual nations or collectives, but policy that supports and guides the ability of the contracted parties to ensure their own individual compliance, within a global, predictable, and homogeneous policy framework protecting the core stability and security of the DNS.

The RySG provided feedback on the Board's questions.

Questions

1. EPDP Phase 2A Rec. #1 provides, in part, “The EPDP Team recommends that 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. ICANN org MUST coordinate with the technical community, for example the RDAP WG, to develop any necessary standards associated with using this field or fields within EPP and the RDDS.” Please refer to p. 6 of the Final Report for the full text of the recommendation. Is there any new, specific, and concise information the ICANN Board should consider with respect to Recommendation 1?

RySG comment:

The RySG continues to believe that recommendation 1, remains merely an implementation matter, and does not materially benefit the question as to how the differentiation implied by such a data element, may actually be achieved in a consistent manner that pays due heed to compliance with relevant laws relating to the handling of data, personal or otherwise.

The RySG continues to state that the underlying utility, use and indeed justification/necessity for the creation of the data element, remains hugely unclear. The RySG, in the spirit of the multistakeholder model, and noting the insistence of our colleagues, vis á vis inclusion (prior to the GNSO Council vote), saw no reason to seek to block the recommendation; however, we will urge the Board, in their consideration, to consider the lack of clarity as to what benefit such a data element achieves in the absence of stated outcomes which remain unforthcoming by those initial proponents.

Finally, we further believe that the recommendation is not without significant implementation issues, many of which remain wholly conditional on third party processes, for example, the actual definition of the data element will lie within the IETF and not ICANN's remit.

2. EPDP Phase 2A Rec. #2 provides, in part, “The EPDP Team recommends that Contracted Parties who choose to differentiate based on person type SHOULD follow the guidance¹ below and clearly document all data processing steps.” Please refer to p. 7 of the Final Report for the full text of the recommendation. Is there any new, specific, and concise information the ICANN Board should consider with respect to Recommendation 2?

RySG comment:

The RySG encourages the Board to consider our minority statement in this matter. The RySG are exceptionally supportive of any and all attempts to help clarify the means by which, we, as contracted parties may, with some uniformity, apply the expectations of data privacy legislation, ensuring that data that should be protected, is protected, and to the greatest extent achievable, that non-personal data is made appropriately available. For this reason we supported voluntary guidance. This being noted, and as we have explained, we do not believe that the guidance that was ultimately created, is of any great practical application and use. The guidance is merely a restatement of legal principles, and provides little or no ‘guidance’ as to how practically such principles are to be applied. The RySG does not believe the guidance to be wrong, just that it offers little or no substance to properly inform the contracted parties, as was hoped.

3. EPDP Phase 2A Rec. #3 provides, in part, “The EPDP Team recommends, in line with GDPR Article 40 requirements for Codes of Conduct, that the above developed guidance concerning legal/natural differentiation should be considered by any possible future work within ICANN by the relevant controllers and processors in relation to the development of a GDPR Code of Conduct.” Is there any new, specific, and concise information the ICANN Board should consider with respect to Recommendation 3?

RySG comment:

The RySG refers to our comments made at 2 above, and add that, although such guidance is certainly a starting point for any Art 40 type Code of Conduct, the RySG would expect that a far more detailed approach, than what is currently contained in recommendation 3, would be required. The RySG would refer the Board to the statement of the Irish Data Protection Commission, insofar as they have noted “A GDPR ‘Code of Conduct’ is more than just a guidance or best practice document, and it must materially specify or enhance the application of data protection law to a certain sector or processing activity – not merely be a restatement of the GDPR”. (see: <https://www.dataprotection.ie/en/organisations/codes-conduct>) . It is in this vein that we would again remind the Board that in its current form, the proposed code of conduct remains quite removed from that which would be considered ‘guidance’ sufficient to meet the requirements of Article 40.

4. EPDP Phase 2A Rec. #4 provides, in part, “The EPDP Team recommends that Contracted Parties who choose to publish an intended to be pseudonymized 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 (see Annex F), as well as any other relevant guidance provided by applicable data protection authorities. Is there any new, specific, and concise information the ICANN Board should consider with respect to Recommendation 4?

RySG comment:

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5. Other Comments

Are there any additional comments you would like to provide?

The RySG would like to thank the Board for this opportunity and again would like to affirm our belief that the multi-stakeholder model is at its best when it seeks to enable the contracted parties to comply with laws as it may apply to them individually, across the global legislative landscape. We submit that we continue to earnestly support ICANN and its mission, and we do urge the Board, especially in light of recent legislative lobbying and activism, that the ICANN community is at its most effective, when we create policy that does not seek to enforce individual laws, by individual nations or collectives, but policy that supports and guides the ability of the contracted parties to ensure their own individual compliance, within a global, predictable, and homogeneous policy framework protecting the core stability and security of the DNS.