

ICANN WHOIS, GDPR and EPDP

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Disclaimer

This is a purely personal perspective, from the point of view of one EPDP WG member. It does not in any way represent the official view of the EPDP WG as a whole, the EPDP leadership, the GNSO Council, or my pet bat Eric.

ICANN WHOIS

- Old, 1980's model WHOIS migrated to "ICANN WHOIS" in 1999
- IETF CRISP/IETF WHOIS replacement failed
- gTLD registries/registrars contractually obliged to maintain WHOIS (as per Registrar Accreditation Agreement)
- ccTLD usage varies (some have no WHOIS at all)
- Privacy issues repeatedly pointed out
- ICANN Expert Working Group recommended replacing WHOIS with new Registration Directory Service (RDS) / RDAP in 2014

"The EWG unanimously recommends abandoning today's WHOIS model of giving every user the same entirely anonymous public access to (often inaccurate) gTLD registration data. Instead, the EWG recommends a paradigm shift to a next-generation RDS that collects, validates and discloses gTLD registration data for permissible purposes only. While basic data would remain publicly available, the rest would be accessible only to accredited requestors who identify themselves, state their purpose, and agree to be held accountable for appropriate use."

General Data Protection Regulation

- Adopted on 14 April 2016
- Enforceable 25 May 2018
- Regulation, not directive
 - Directly binding and applicable
- Violators can be fined 4% of annual worldwide turnover or €20 million

Temporary Specification

- ICANN “Temporary Specification for gTLD Registration Data” approved May 17, 2018
- Redacted RDDS output
- Anonymized email for contacts
- Data collection requirements unchanged
- Has to be reaffirmed by ICANN Board every 90 days
- Not to exceed 1 year

EPDP

- “Expedited Policy Development Process (EPDP) on the Temporary Specification for gTLD Registration Data” initiated 19 June 2018. Charter drafted by full GNSO Council.
- 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”.

EPDP Charter

- Purposes for Processing Registration Data
 - Legal basis
- Required Data Processing Activities
 - Collection of data
- Publication of Data
- Differentiation
 - Geographic, legal vs. Natural persons
- Responsibilities
- Reasonable Access / Standardized (Universal) Access
 - Only after gating questions have been answered

Membership

- By Stakeholder Groups
- Members, Alternates and Observers
- For the purpose of assessing level of consensus, Members are required to represent the formal position of their SG/C or SO/AC, not individual views or positions
- In total, 29 Members, 23 Alternates and 6 Liaisons (including Chair) => 35

Practical work

- 2 weekly 2-hour calls (Adobe Connect)
- 3-day Face-to-Face in LA (September 24-26)
- Subteams
- Professional mediators (CBI)
- A major discussion focused on GDPR Article 6 (legal basis)

Art 6 (b) - processing is necessary for the **performance of a contract** to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract

Art 6 (f) processing is necessary for the purposes of the **legitimate interests pursued by the controller or by a third party**, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.

Does the multistakeholder model work?

- Clear polarisation
 - “Privacy Caucus” – RySG, RrSG, NCUC
 - “Surveillance Caucus” – BC, IPC, GAC, ALAC, SSAC
 - Only non-aligned seems to be ISPCP
- Every discussion seems to drift into discussing access

Meanwhile

- Court case in Germany (EPAG/Tucows)
- Letter from Business Constituency and Intellectual Property Constituency to ICANN CEO – “Next Steps for Access to Non-Public WHOIS”, September 7, 2018
- Blog posting by ICANN CEO Göran Marby, “GDPR and Data Protection/Privacy Update”, September 24 (first day of LA F2F)
 - “We have been exploring different avenues to address the tension between ICANN's public interest requirements that contractually obligate registries and registrars to provide access to WHOIS data, and the potential liability faced by ICANN, registries and registrars as data controllers when making non-public registration data available to third-parties in response to WHOIS queries.”

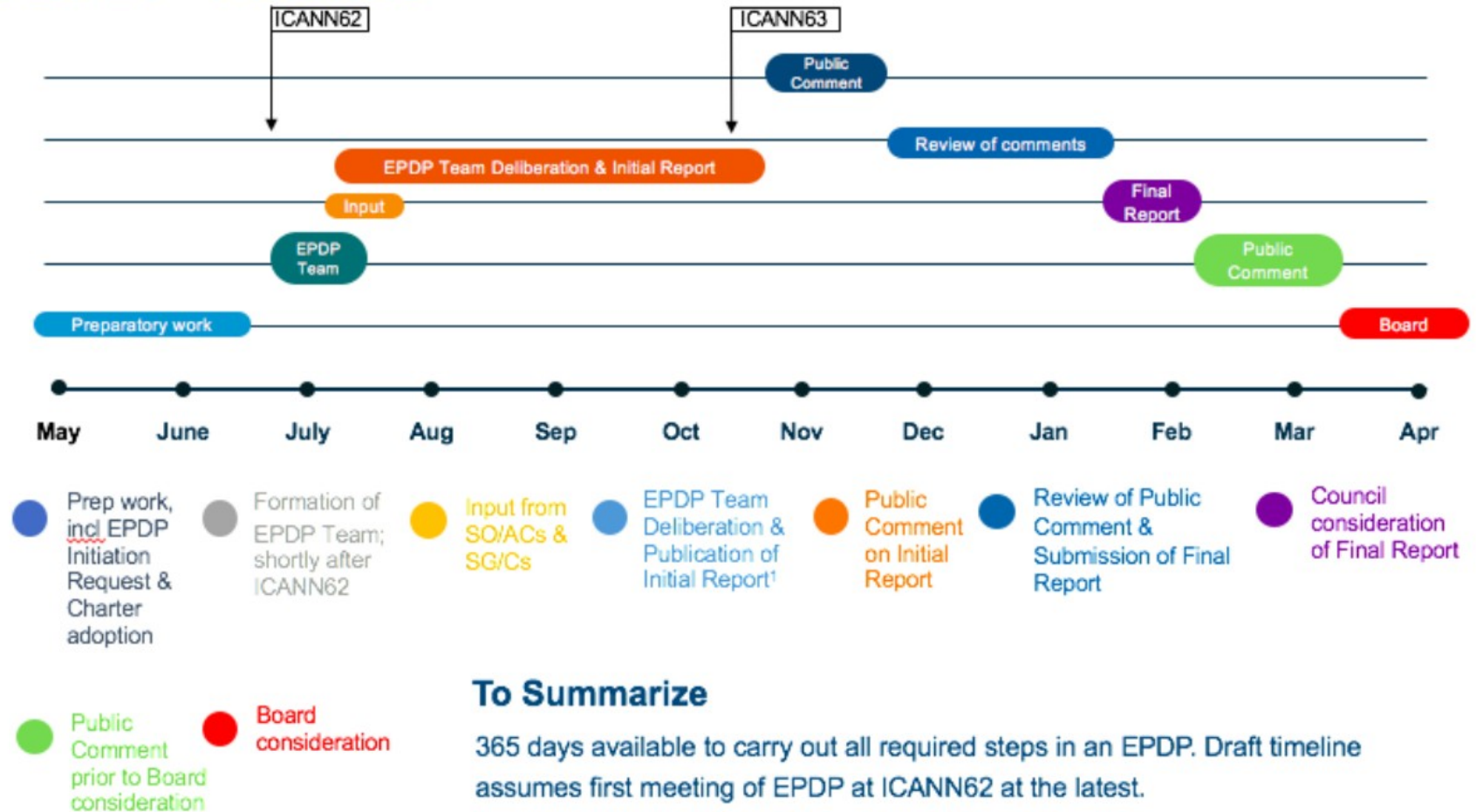
Meanwhile...

- First semiannual NTIA Report on ICANN activities (to U.S Congress)

"..... NTIA, engaging directly with ICANN as well as through the Governmental Advisory Committee (GAC), aggressively worked to maintain the ability for law enforcement, cybersecurity practitioners, intellectual property rights holders, and other users to access WHOIS information in a timely manner."

Where are we now?

Draft EPDP Timeline



¹The EPDP Team Deliberation and Initial Report contemplates dealing specifically with questions relating to the Temporary Specification. Once gating questions have been addressed, work will commence on the standardized access model. As such, work on the standardized access model is not currently reflected in this timeline.

Where are we now?

Topic 1	Topic 2	Planned Delivery
ing Mode		
ns		
ing	Triage report; Appendix D, E, G - URS, UDRP, Transfers	
ing	Appendix C - Data Processing Requirements - Activity & Role Chart	
ing	Appendix C - Data Processing Requirements - Activity & Role Chart	Triage Report - submitted 13 Sept
ments	Appendix C - Data Processing Requirements - Activity & Role Chart	
ments	Appendix A 2.1 & 3.0 - European Economic Area	Redline 4.4 - deliverable terminate
ata set	Appendix A 2.1 & 3.0 - European Economic Area	Data Elements Matrix To be used c
ata set	Sections 5,6,7 Registry / Registrar Requirements	Redline Appendix C - deliverable te
	Sections 5,6,7 Registry / Registrar Requirements	Redline Appendix A 2.1, 2.2-2.4, 3.
ments for Processing		
Processing		Short list of ICANN purposes
ed processing activities		Data elements matrix per discusse
F - Compliance	Review Data Elements Workbook C	Next version of Workbook C
A - Rt Rights	Review Data Elements Workbook N - Ry Eligibility Requirements	Next versions of Workbooks F & N
B - lawful disclosure	Review Data Elements Workbook M & N	Next versions of Workbooks A, M,
	Prepare for ICANN meeting	Next versions of Workbook B
		63 meeting materials, ICANN Purp
		TBD
		TBD
ment		Initial Report
ial Report		Public Comment Period close

we were formed to discuss charter questions not specifically discussed; these meetings are not listed here.

Quote from LA F2F meeting:

"We went all the way down the deep, dark rabbit hole, and what we found was not cute fluffy bunnies, but rabbit shit"