

Preliminary Recommendation #5

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The EPDP Team recommends that Contracted Parties who choose to publish a registrant- or registration-based email address in the publicly accessible RDDS should ensure appropriate safeguards for the data subject in line with relevant guidance on anonymization techniques provided by their data protection authorities and the appended legal guidance in this recommendation (see Annex E).

EPDP Team Question for Community Input #5

Does this guidance as written provide sufficient information and resources to Registrars and Registry Operators who wish to publish a registrant- or registration-based email address? If not, what is missing and why?

***Disclaimer:** This overview has been developed to facilitate the EPDP Team’s consideration of the concerns expressed and possible updates to the recommendations. However, this does not replace the EPDP Team’s obligation to review all input received in full and to indicate if any concerns in this overview have inadvertently been mischaracterized.*

Does this guidance as written provide sufficient information and resources?

Summary	Corresponding PCRT Comment #	Further Discussion Required? If yes, please indicate what specifically should be further discussed that will assist the EPDP Team in moving forward the deliberations on this recommendation.
<p>1. No</p> <p>The recommendation is lacking in practical and functional aspects of guidance (Blacknight, RySG, ALAC)</p> <p>We are concerned that the wording of this guidance implies that anonymization of email address contacts is possible, when the guidance from Bird & Bird very clearly concludes that this data is pseudonymous, not anonymous, even from the perspective of third parties. (RySG)</p>	<p>1 (Blacknight), 4 (RySG), 5 (NCSG), 6 (NTIA), 8 (ISPCP), 9 (eco), 12 (Tucows), 13 (RrSG), 14 (GAC), 15 (IPC), 16 (ALAC), 17 (Namecheap)</p>	<p>Yes/No</p>

The legal memo from Bird&Bird has made it clear that publishing or automatically disclosing either registrant-based or registration-based email addresses would be considered to be the processing of personal data, thus subject to GDPR. There has been very little discussion of the rights of the individual, and how best to protect registrants' privacy. (NCSG)

The assessment of whether "appropriate safeguards" are in place requires a risk-based assessment of: (i) whether to use a registrant-based or registration-based email address; and (ii) whether such addresses should be available through web publication or automatic disclosure. The EPDP Phase 2A team should make the guidance more prescriptive about the solution (Registrant Based + Web Publication) with Contracted Parties being asked only to satisfy themselves that the solution provides adequate data subject safeguards before adopting it. (NTIA)

We would prefer the guidance to be stronger in encouraging registration-based e-mail addresses versus registrant-based e-mail addresses (ISPCP, eco)

It is impossible to encompass all possible legal and regulatory obligations for all Contracted Parties worldwide in one recommendation. It is appropriate for ICANN Org to provide non-binding guidance to aid Contracted Parties, including the legal advice from Bird & Bird to the EPDP Team. (Tucows)

If it would stay in its current form, it would need to be supplemented. A notification to Registrars that they should consult their own legal counsel or request information from their Data Protection Authority along with sharing the Bird & Bird legal memos does provide valuable assistance while

<p>remaining appropriate to the individual recipient of the guidance. (RrSG, Namecheap)</p> <p>The guidance is a helpful first step for providing information to Contracted Parties, however more could be added to provide best practices better supporting those who do wish to publish an anonymized registrant-based or registration-based email address. The GAC calls for further consideration of a recommendation for publication of a uniform anonymized email address in light of the benefits that publication of such emails would provide, and considering the little to no impact experienced by many data subjects when such techniques are used in privacy/proxy services. (GAC)</p> <p>If the EPDP Team does not reconsider the importance of publishing a registrant-based email contact or ID number, despite the relatively low risk of GDPR non-compliance compared to the substantial benefits to WHOIS users, the guidance provided by the Bird & Bird Memo MUST be distilled into more easily-implementable requirements and steps for any Contracted Parties who would voluntarily publish a registrant-based or registration-based email contact. (IPC)</p>		
<p>2. If the EPDP Phase 2A team did decide to recommend that registrant-based emails be required, Contractual Compliance foresees hurdles in enforcing such a requirement without full access to non-public Registration Data. Contracted Parties will use the pseudonymized emails for domain names that are redacted; therefore, without obtaining the non-public Registration Data from the Contracted Party, there is currently no way for Compliance to determine whether the same pseudonymized email is displayed in the RDDS for domain names registered by the same RNH. Please note that any recommendations stated</p>	<p>7 (ICANN org)</p>	<p>Yes/No</p>

<p>as “guidance” or “should” would not result in any policy requirements that are enforceable. Most likely this language would be included as Implementation Notes or informal educational material for implementers. (ICANN org)</p>		
<p>3. Yes</p>	<p>10 (BC)</p>	<p>Yes/No</p>
<p>4. Registrars should deploy (or continue to deploy) methods to support registrant-based email contact (See section 2.1.2 discussion of the two methods). The SSAC further recommends uniform requirements for safeguards be developed for the registrant-based email contact. The requirements should include maintaining the privacy of the registrant as appropriate and service level commitments to set expectations for the use of the service. These safeguards are independent of the method chosen (e.g., unique email addresses or web-based forms).</p> <p>To achieve policy objective (A2), additional research is needed on the methods, their efficacy, and their tradeoffs. We recommend the EPDP Phase 2A not specify a method for correlating registrations with a common contact at this time. (SSAC)</p>	<p>11 (SSAC)</p>	<p>Yes/No</p>