ICANN | GNSO

Generic Names Supporting Organization

Initial Report on the Temporary Specification for gTLD Registration Data Expedited Policy Development Process

Status of This Document

This is the Initial Recommendations Report of the GNSO Expedited Policy Development Process (EPDP) Team on the Temporary Specification for gTLD Registration Data that has been posted for public comment.

Preamble

The objective of this Initial Report is to document the EPDP Team's: (i) deliberations on charter questions, (ii) preliminary recommendations, and (iii) additional identified issues to consider before the Team issues its Final Report. The EPDP Team will produce its Final Report after its review of the public comments received in response to this report. The EPDP Team will submit its Final Report to the GNSO Council for its consideration.

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1 Executive Summary

Introduction

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 ("Contracts"). The Temporary Specification provides modifications to existing requirements in the Registrar Accreditation and Registry Agreements in order to comply with the European Union's General Data Protection Regulation ("GDPR"). Following adoption of a temporary specification, the procedure for Temporary Policies as outlined in the Registrar Accreditation and Registry Agreements, provides the Board "shall immediately implement the Consensus Policy development process set forth in ICANN's Bylaws". Additionally, the procedure provides this Consensus Policy development process on the Temporary Specification must be carried out within a one-year period as the Temporary Specification can only remain in force for up to one year, from the effective date of 25 May 2018, i.e., the Temporary Specification will expire on 25 May 2019.

On 19 July 2018, the GNSO Council initiated an Expedited Policy Development Process (EPDP) and chartered the EPDP on the Temporary Specification for gTLD Registration Data Team. Unlike other GNSO PDP efforts, which are open for anyone to join, the GNSO Council chose to limit the membership composition of this EPDP, primarily in recognition of the need to complete the work in a relatively short timeframe and to resource the effort responsibly. GNSO Stakeholder Groups, the Governmental Advisory Committee (GAC), the Country Code Supporting Organization (ccNSO), the At-Large Advisory Committee (ALAC), the Root Server System Advisory Committee (RSSAC) and the Security and Stability Advisory Committee (SSAC) were each been invited to appoint up to a set number of members and alternates, as outlined in the charter. In addition, the ICANN Board and ICANN Org have been invited to assign a limited number of liaisons to this effort. A call for volunteers to the aforementioned groups was issued in July and the EPDP Team held its first meeting on 1 August 2018.

This EPDP Team was 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. Additionally, the EPDP Team's charter contemplates a discussion of a standardized access model to nonpublic registration data; however, the discussion of a standardized access model will occur only after the EPDP Team has comprehensively answered a series of "gating questions", which have been specified in the EPDP Team's Charter. Specifically, the gating questions require the EPDP Team to examine (i) the validity, legitimacy and legal basis of the purposes outlined in the Temporary Specification, (ii) the legitimacy, necessity and scope of the registrar collection of registration data as outlined in the Temporary Specification, (iii) the legitimacy, necessity and scope of the transfer of data from registrars to registries as outlined in the Temporary Specification and (iv) the publication of registration data by registrars and registries as outlined in the Temporary Specification.

In addition to the above-referenced gating questions, the EPDP Team is required to examine: (i) the transfer of data from registrars and registries to escrow providers and ICANN, (ii) the transfer of data from registries to emergency back-end registry operators ("EBERO"), (iii) the definition and framework for reasonable access to registration data, (iv) respective roles and responsibilities under the GDPR, i.e., the responsible parties, (v) applicable updates to ICANN Consensus Policies, e.g., Transfer Policy, Uniform Domain Name Dispute Resolution Policy ("UDRP"), Uniform Rapid Suspension ("URS"), et.al. The EPDP Team shall also consider what subsidiary recommendations it might make for future work by the GNSO which might be necessary to ensure relevant Consensus Policies, including those related to registration data, are reassessed to become consistent with applicable law.

1.2 Proposed Responses to Charter Questions & Preliminary Recommendations

[To be updated following completion of relevant chapter]

Deliberations and Community Input

The EPDP Team reached out to all ICANN Supporting Organizations and Advisory Committees as well as GNSO Stakeholder Groups and Constituencies with a request for input at the start of its deliberations (see https://community.icann.org/x/Ag9pBQ). All responses received were documented for the EPDP Team's review and incorporated into the relevant Discussion Summary Indexes which the EPDP Team used to help inform its deliberations (see https://community.icann.org/x/ExxpBQ). The EPDP Team met at least twice every week for two-hour meetings, in addition to extensive email discussions and online collaboration to develop this Initial Report.

Conclusions and Next Steps

This Initial Report will be posted for public comment for [30 days]. After the EPDP Team's review of public comments received on this report, the EPDP Team will update and finalize this report as deemed necessary for submission to the GNSO Council.

Other Relevant Sections of this Report

For a complete review of the issues and relevant interactions of this EPDP Team, the following sections are made available in the later pages of this document.

- Background of the issue, documenting how the Temporary Specification was adopted by the Board and the required procedures accompanying the Board's adoption of a Temporary Specification
- Documentation of who participated in the EPDP Team's deliberations, attendance records, and links to Statements of Interest as applicable.
- An annex that includes the EPDP Team's mandate as defined in the Charter adopted by the GNSO Council.
- Documentation on the solicitation of community input through formal SO/AC and SG/C channels, including responses.

2 EPDP Team Approach

This Section provides an overview of the working methodology and approach of the EPDP Team. The points outlined below are meant to provide the reader with relevant background information on the EPDP Team's deliberations and processes, and should not be read as representing the entirety of the efforts and deliberations of the EPDP Team.

Working Methodology

The EPDP Team on the Temporary Specification for gTLD Registration Data began its deliberations on 1 August 2018. It decided to continue its work primarily through conference calls scheduled twice per week, in addition to email exchanges on its mailing list. Additionally, the EPDP Team held two face-to-face meetings: one dedicated set of face-to-face meetings at the ICANN headquarters in Los Angeles and the second set of face-to-face discussions took place at the ICANN63 Public Meeting in Barcelona, Spain. All of the EPDP Team's meetings are documented on its wiki workspace, including its mailing list, draft documents, background materials and input received from ICANN's SO/ACs and the GNSO's Stakeholder Groups and Constituencies.

The EPDP Team also prepared a Work Plan, which was reviewed and updated on a regular basis. In order to facilitate its work, the EPDP Team used a template to tabulate all input received in response to its request for Constituency and Stakeholder Group statements (see Annex B). This template was also used to record input from other ICANN Supporting Organizations and Advisory Committees, as well as individual EPDP Team members' responses (either on their own behalf or as representatives of their respective groups) which can be found in Annex C.

The EPDP Team held a community session at the ICANN63 Public Meeting in Barcelona, during which it presented its methodologies and preliminary findings to the broader ICANN community for discussion and feedback.

Initial Fact-Finding and Triage

Per its Charter, the EPDP Team was tasked to review a list of topics and questions, as part of its work to develop policy recommendations relating to the Temporary Specification for gTLD Registration Data. These topics and questions were derived in large part from the prior work of the EPDP Drafting Team, comprised of GNSO Councilors.

The first deliverable of the EPDP Team, per its charter, was a "triage" document of the Temporary Specification which included 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).

Based on the results of a section-by-section survey completed by the EPDP Team, there are very few areas where the consensus opinion of the EPDP Team agrees with the current language in the Temporary Specification. However, there were several areas of agreement with the underlying principles in several sections of the Temporary Specification. Where a constituency / stakeholder group / advisory committee did indicate support for a certain section of the Temporary Specification, edits were often also suggested, meaning that essentially no section of the Temporary Specification will be adopted without modifications.

That does not mean that the Triage report and the surveys and discussion that formed the basis for the Triage report were without value. There were several takeaways that informed the EPDP Team's work on the Initial Report:

1. Several comments made by the EPDP Team members indicated how the sections/topics should be ordered for the next round of discussion; this served as a basis for a more efficient discussion going forward.
2. The rationale provided by EPDP Team members in support / opposition of each section can be used in some cases to narrow the discussion to particular issues. Similarly, specific suggestions were made in some cases for how sections could be modified, which could form a basis for further deliberation.
3. The EPDP Team compiled a library of each group's positions on and issues with a variety of topics.

The Triage Report as well as input received can be found here: https://community.icann.org/x/jxBpBQ.

2.3 Discussion Summary Indexes

The Triage Report caused the development of the Discussion Summary Indexes (DSIs). Realising that the EPDP Team had to refer to many different documents to inform their deliberations, the Support Team combined all these inputs into one standard document

to ensure that each member of the EPDP Team could operate efficiently and from the same set of information. The EPDP Team used the DSIs to allow for a focused and systematic approach in the deliberations; the DSIs included: (i) the relevant Charter Questions mapped to the Temporary Specification; (ii) relevant input received in response to the triage surveys, (iii) early input and (iv) advice provided by the European Data Protection Board (EDPB). The DSIs can be found here: https://community.icann.org/x/ExxpBQ.

2.4 Data Elements Workbooks

Early in its work, the EPDP Team realized that a review of each of the data elements collected, the purpose for its processing and the legal basis for that data processing was necessary. This led to the creation of a large spreadsheet to coordinate the analysis to be done by the team and capture all the necessary information to answer the Charter questions. The need to provide less unwieldy tool to lead the work led to the creation of the Data Elements Workbooks, which bring together purpose, data elements, processing activities, lawful basis for processing and responsible parties. The Data Element Workbook for each purpose identified by the EPDP Team can be found in Annex [include reference] of this Initial Report.

2.5 Small Teams

Small Teams (and the comparative dynamics of small vs large teams) were created as a tool for quickly developing proposed consensus positions for the entire team to consider. In addition to the Data Elements Workbooks, the EPDP Team also addressed a number of overarching Charter Questions that were not included in the Data Element Workbooks, through the use of small teams. These small teams explored these issues, developed proposed responses to the charter questions and, as appropriate, related preliminary recommendations, which were then reviewed by the full EPDP Team. Topics covered included processing of data for natural vs. legal persons, the geographic application of the policy recommendations and the definition of 'reasonable access'.

This approach, including the work products, form the basis for the EPDP Team's proposed responses to the Charter Questions and preliminary recommendations which can be found in the next section of this Initial Report.

2.6 Mediation Techniques

- In this work, the use of professional mediation techniques were also employed as a way to facilitate the development of consensus. Certified mediators from CBI (www.cbi.org) facilitated discussions in face-to-face meetings and were generally credited with having a positive effect on the timely development of consensus position and on keeping the discussion issue-focused.

3 EPDP Team Responses to Charter Questions & Preliminary Recommendations

DISCLAIMER: ALL CONTENT, AND ESPECIALLY THE DRAFT RECOMMENDATIONS, WILL NEED TO BE CROSS-CHECKED WITH THE FINAL LANGUAGE AGREED TO BY THE EPDP TEAM BEFORE PUBLICATION.

The EPDP Team will not finalize its responses to the charter questions and recommendations to the GNSO Council until it has conducted a thorough review of the comments received during the public comment period on this Initial Report. Similarly, no formal consensus call has been taken on these responses and preliminary recommendations, but these did receive the support of the EPDP Team for publication for public comment. There where applicable, positions differing from the general direction of thinking have been reflected.

From the EPDP Team Charter:
"The 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 those related to registration data, are reassessed to become consistent with applicable law".

Part 1: Purposes for Processing Registration Data

Charter Question
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?

EPDP Team considerations and deliberations in addressing the charter questions:

- The EPDP Team considered both the input provided by each group in response to the triage surveys as well as the input provided by each group in response to the request for Early Input in relation to these questions.
- In addition, the EPDP Team reviewed the feedback that the European Data Protection Board provided in relation to lawful purposes for processing personal data and took specific note of the following:

"Nevertheless, the EDPB considers it essential that a clear distinction be maintained between the different processing activities that take place in the context of WHOIS and the respective purposes pursued by the various stakeholders involved. There are processing activities determined by ICANN, for which ICANN, as well as the registrars and registries, require their own legal basis and purpose, and then there are processing activities determined by third parties, which require their own legal basis and purpose. The EDPB therefore reiterates that ICANN should take care not to conflate its own purposes with the interests of third parties, nor with the lawful grounds of processing which may be applicable in a particular case."[1]

As well as,

"As expressed also in earlier correspondence with ICANN (including this letter of December 2017 and this letter of April 2018), WP29 expects ICANN to develop and implement a WHOIS model which will enable legitimate uses by relevant stakeholders, such as law enforcement, of personal data concerning registrants in compliance with the GDPR, without leading to an unlimited publication of those data."[2]

- All of the aforementioned input has been captured in the Discussion Summary Index for section 4.4 which can be found here: https://community.icann.org/x/ExxpBQ.
- The EPDP Team deliberated on the purposes listed in the Temporary Specification as a starting point, but decided to reformulate the text and further specify the relevant lawful basis (if any) and the party/parties involved in the processing.

EPDP Team Preliminary Rec #1.
The EPDP Team recommends that the following ICANN purposes for processing gTLD Registration Data form the basis of the new policy:

1. As subject to Registry and Registrar terms, conditions and policies, and ICANN Consensus Policies:
   - To establish the rights of a Registered Name Holder in a Registered Name;
   - To ensure that a Registered Name Holder may exercise its rights in the use and disposition of the Registered Name; and
   - To activate a registered name and allocate it to a Registered Name Holder;
2. Maintaining the security, stability and resiliency of the Domain Name System in accordance with ICANN's mission through the enabling of lawful access for

[1] See https://www.icann.org/en/system/files/correspondence/jelinek-to-marby-05jul18-en.pdf
[2] See https://edpb.europa.eu/news/news/2018/european-data-protection-board-endorsed-statement-wp29-icannwhois_en

legitimate third-party interests to data elements collected for other purposes identified herein;
3. Enable communication with and/or notification to the Registered Name Holder and/or their delegated agents of technical and/or administrative issues with a Registered Name;
4. Provide mechanisms for safeguarding Registered Name Holders' Registration Data in the event of a business or technical failure, or other unavailability of a Registrar or Registry Operator;
5. Handle contractual compliance monitoring requests, audits, and complaints submitted by Registry Operators, Registrars, Registered Name Holders, and other Internet users;
6. Coordinate, operationalize and facilitate policies for resolution of disputes regarding or relating to the registration of domain names (as opposed to the use of such domain names), namely, the UDRP, URS, PDDRP, RDDRP and future-developed domain name registration-related dispute procedures for which it is established that the processing of personal data is necessary.;
7. Enabling validation of Registered Name Holder satisfaction (fulfillment) of gTLD registration policy eligibility criteria.

Note that for each of the above purposes, the EPDP Team has also identified: (i) the related processing activities; (ii) the corresponding lawful basis for each processing activity; and (iii) the data controllers and processors involved in each processing activity. For more information regarding the above, please refer to the Data Elements Workbooks which can be found in Annex [to be confirmed].

Question #1 for community input: Are these purposes sufficiently specific and, if not, how do you propose to modify them? Please also provide the relevant rationale, keeping in mind compliance with the GDPR.

EPDP Team Preliminary Rec #2.
The EPDP Team commits to develop and coordinate policy in the system for standardized access to non-public registration data portion of this EPDP regarding lawful access for legitimate third-party interests regarding abuse or intellectual property to data identified herein that is already collected.

EPDP Team Preliminary Rec #3.
The EPDP Team recommends that requirements related to the accuracy of registration data under the current ICANN contracts and consensus policies shall not be affected by this policy.

Part 2: Required Data Processing Activities

Charter Question
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?
b3) How shall legitimacy of collecting data be defined (at least for personal data collected from European registrants and others in jurisdictions with data protection law)?
b4) 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?

EPDP Team considerations and deliberations in addressing the charter questions:

- The EPDP Team considered both the input provided by each group in response to the triage surveys as well as the input provided by each group in response to the request for early input in relation to these questions.
- In addition, the EPDP Team reviewed the feedback that the European Data Protection Board provided in relation to the collection of registration data and took specific note of the following:

"The EDPB considers that registrants should in principle not be required to provide personal data directly identifying individual employees (or third parties) fulfilling the administrative or technical functions on behalf of the registrant. Instead, registrants should be provided with the option of providing contact details for persons other than themselves if they wish to delegate these functions and facilitate direct communication with the persons concerned. It should therefore be made clear, as part of the registration process, that the registrant is free to (1) designate the same person as the registrant (or its representative) as the administrative or technical contact; or (2) provide contact information which does not directly identify the administrative or technical contact person concerned (e.g. For the avoidance of doubt, the EDPB recommends explicitly clarifying this within future updates of the Temporary Specification[3]".

- All of the aforementioned input has been captured in the Discussion Summary Index for Appendix A which can be found here: https://community.icann.org/x/ExxpBQ.
- As a starting point, the EPDP examined data elements required to be collected today. The data elements workbooks in Annex [include reference] outline in detail which data elements are required to be collected for which purpose, and which data elements are optional for a Registered Name Holder to provide. Similarly, the data elements workbooks identify the applicable lawful basis. Processing activities identified as lawful under art. 6.1(b) are considered necessary for the performance of a contract.

[3] See https://www.icann.org/en/system/files/correspondence/jelinek-to-marby-05jul18-en.pdf

EPDP Team Preliminary Rec #4.
The EPDP Team recommends that the data elements defined in the data elements workbooks in Annex [include reference] are required to be collected by registrars. In the aggregate, this means that the following data elements are to be collected [to be updated with final version]:

	PURPOSE A	PURPOSE B	PURPOSE C	PURPOSE E - Ia	PURPOSE E - Ib	PURPOSE F	PURPOSE M	PURPOSE N	TBD					
Data Elements Collected or Generated - Pre GDPR	Fields to be Collected	Fields for Processing	Fields for Processing	Fields for Processing	Fields for Processing	Fields for Processing	Fields for Processing	Fields for Processing	Fields for Processing	Collect or not?	I	(0)	–	Total:
Domain Name	1	1	1	1		1	1	1			7	0	0	7
Registry Domain ID	-	-	-	-		-	-	1			1	0	6	7
Registrar Whois Server	1	1	-	-		1	1	1			5	0	2	7
Registrar URL	1	1	-	-		1	1	1			5	0	2	7
Updated Date	1	1	-	-		1	1	1			5	0	2	7
Creation Date	1	1	-	-		1	1	1			5	0	2	7
Registry Expiry Date	1	1	-	-		1	1	1			5	0	2	7
Registrar Registration Expiration Date	1	1	-	1		1	1	1			6	0	1	7
Registrar	1	1	-	1		1	1	1			6	0	1	7
Registrar IANA ID	1	1	-	-		1	1	1			5	0	2	7
Registrar Abuse Contact Email	1	1	1	-		1	1	1			6	0	1	7
Registrar Abuse Contact Phone	1	1	1	-		1	1	1			6	0	1	7
Reseller	1	1	-	1		1	1	1			6	0	1	7
Domain Status	1	1	-	-		1	1	1			5	0	2	7
Registry Registrant ID	-	-	-	-		-	-	1			1	0	6	7
Registrant Fields														
• Name	1	1	1	1		1	1	1			7	0	0	7
• Organization (opt.)	(1)	(1)	(1)	-		(1)	(1)	1			1	5	1	7
• Street	1	1	1	1		1	1	1			7	0	0	7
• City	1	1	1	1		1	1	1			7	0	0	7
• State/province	(1)	1	1	1		1	1	1			6	1	0	7
• Postal code	(1)	1	1	1		1	1	1			6	1	0	7
• Country	1	1	1	1		1	1	1			7	0	0	7
• Phone	1	1	1	1		1	(1)	(1)			5	2	0	7
• Phone ext (opt.)	(1)	(1)	(1)	-		(1)	(1)	(1)			0	6	1	7
• Fax (opt.)	-	(1)	(1)	-		(1)	(1)	(1)			0	5	2	7
• Fax ext (opt.)	-	(1)	(1)	-		(1)	(1)	-			0	4	3	7
• Email	1	1	1	1		1	1	1			7	0	0	7
2nd E-Mail address	-	-	-	-		-	-	(1)			0	1	6	7
Admin ID	-	-	-	-		-	-	-			0	0	7	7
Admin Fields														
• Name	1	1	(1)	-		1	-	(1)			3	2	2	7
• Organization (opt.)	(1)	(1)	(1)	-		(1)	-	(1)			0	5	2	7
• Street	1	1	(1)	-		1	-	(1)			3	2	2	7
• City	1	1	(1)	-		1	-	(1)			3	2	2	7
• State/province	(1)	1	(1)	-		1	-	(1)			2	3	2	7
• Postal code	(1)	1	(1)	-		1	-	(1)			2	3	2	7
• Country	1	1	(1)	-		1	-	(1)			3	2	2	7
• Phone	1	1	(1)	-		1	-	(1)			3	2	2	7
• Phone ext (opt.)	(1)	(1)	(1)	-		(1)	-				0	4	2	6
• Fax (opt.)	-	(1)	(1)	-		(1)	-	(1)			0	4	3	7
• Fax ext (opt.)	-	(1)	(1)	-		(1)	-	-			0	3	4	7
• Email	1	1	(1)	-		1	-	(1)			3	2	2	7
Tech ID	-	-	-	-		-	-	-			0	0	7	7
Tech Fields														
• Name	1	1	(1)	-		1	-	(1)			3	2	2	7
• Organization (opt.)	(1)	(1)	(1)	-		(1)	-	(1)			0	5	2	7
• Street	1	1	(1)	-		1	-	(1)			3	2	2	7
• City	1	1	(1)	-		1	-	(1)			3	2	2	7
• State/province	(1)	1	(1)	-		1	-	(1)			2	3	2	7
• Postal code	(1)	1	(1)	-		1	-	(1)			2	3	2	7
• Country	1	1	(1)	-		1	-	(1)			3	2	2	7
• Phone	1	1	(1)	-		1	-	(1)			3	2	2	7
• Phone ext (opt.)	(1)	(1)	(1)	-		(1)	-	-			0	4	3	7
• Fax (opt.)	-	(1)	(1)	-		(1)	-	(1)			0	4	3	7
• Fax ext (opt.)	-	(1)	(1)	-		(1)	-	-			0	3	4	7
• Email	1	1	(1)	-		1	-	(1)			3	2	2	7
Name Server	1	1	-	-		1	-	1			4	0	3	7
DNSSEC	1	1	-	-		1	-	1			4	0	3	7
Name Server IP Address	1	1	-	-		1	-	1			4	0	3	7
Last Update of Whois Database	1	1	-	-		1	-	1			4	0	3	7
Other Data:														
• Additional data elements as identified by Registry Operator in its registration policy, such as (i) status as Registry Operator Affiliate or Trademark Licensee [.MICROSOFT], (ii) membership in community [.ECO], (iii) licensing, registration or appropriate permits [.PHARMACY, .LAW] place of domicile [.NYC], (iv) business entity or activity [.BANK, .BOT]	-	-	-	-		-	-	1			1	0	6	7
• Field 2	-	-	-	-		-	-	-			0	0	7	7
• Field 3	-	-	-	-		-	-	-			0	0	7	7
• Field 4	-	-	-	-		-	-	-			0	0	7	7
• Field 5	-	-	-	-		-	-	-			0	0	7	7
I	85	41	11	12	0	41	20	28	0					
(0)	12	12	28	0	0	12	5	24	0					
–	16	10	24	51	0	10	38	10	0					

Should be collected
Optional Fields Only
Not selected for collection

In addition, the EPDP Team recommends that the following data elements are optional, i.e., they may, but are not required to be provided by the Registered Name Holder:

technical contact name, email and phone number.[4] Furthermore, in accordance with EDPB advice, registrars are to advise the Registered Name Holder at the time of registration that the Registered Name Holder is free to (1) designate the same person as the registrant (or its representative) as the technical contact; or (2) provide contact information which does not directly identify the technical contact person concerned. [If the Registered Name Holder elects to provide contact information for a technical contact who does not have a direct contractual relationship with the registrar, the registrar is required to redact or obtain all necessary consent from the technical contact prior to publication].

Question #2 for community input: Are the data elements recommended for registrar collection necessary for the purposes identified and/or are any data elements missing that are necessary to achieve the purposes identified? If so, please provide the relevant rationale, keeping in mind compliance with the GDPR.

Charter Question

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?

c3) 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?

c4) 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?

c5) Should registries have the option to require contact data or not?

c6) 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?

EPDP Team considerations and deliberations in addressing the charter questions:

- The EPDP Team considered both the input provided by each group in response to the triage surveys as well as the input provided by each group in response to the request for early input in relation to these questions.
- For each of the purposes, the EPDP Team has identified where and which data is required to be transferred from the registrar to registry for the purposes identified above as well as the identified corresponding lawful basis – see the data elements workbooks in Annex [include reference] for further details. Those processing activities identified as having as a lawful basis under GDPR Art 6.1(b) were considered by the EPDP Team to be necessary for the performance of a contract, i.e., to deliver the service of fulfilling a domain registration.

EPDP Team Preliminary Rec #5.

[4] The GAC representatives on the EPDP Team [others to be added as appropriate] are of the view that physical address should also be requested by the registrar (but optional for the RNH to provide)

The EPDP Team confirms that the specifically-identified data elements under "[t]ransmission of registration data from Registrar to Registry" within the data elements workbooks must be transferred from registrar to registry. These data elements are: [include list following completion of work on data elements workbooks]

Charter Question
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 process 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?

EPDP Team considerations and deliberations in addressing the charter questions

- The EPDP Team considered both the input provided by each group in response to the triage surveys as well as the input provided by each group in response to the request for early input in relation to these questions.
- The EPDP Team considered Charter Question d1 and d2 in the context of the purpose to provide mechanisms for safeguarding Registered Name Holders' Registration Data and [agreed that only data elements collected for other purposes identified herein should be considered for escrow as those elements have been identified as necessary to meet the purpose].

EPDP Team Preliminary Rec #6.

1. The EPDP Team recommends updates to the contractual requirements for registries and registrars to transfer data that they process to the data escrow provider to ensure consistency with the data elements workbooks workbook related to the purpose to provide mechanisms for safeguarding Registered Name Holders' Registration Data.

2. The specifically-identified data elements the EPDP Team recommends to be transferred are provided within the data elements workbook related to the purpose to provide mechanisms for safeguarding Registered Name Holders' Registration Data (see Annex [include reference]. These data elements are: [list data elements following completion of escrow data elements workbooks].

3. The EPDP Team recommends that GDPR-compliant data processing agreements are entered into between ICANN Org and the data escrow providers.

Charter Question
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 process to ICANN Compliance, when required/requested?

EPDP Team considerations and deliberations in addressing the charter questions

- The EPDP Team considered both the input provided by each group in response to the triage surveys as well as the input provided by each group in response to the request for early input in relation to these questions.
- The EPDP Team discussed current requirements as well as future needs in relation to contractual compliance and consulted with the ICANN Compliance Team.

EPDP Team Preliminary Rec #7.

1. The EPDP Team recommends that updates are made to the contractual requirements for registries and registrars to transfer the domain name registration data that they process to ICANN Compliance when required/requested in line with the data elements workbook related to the purpose to handle contractual compliance monitoring requests, audits, and complaints submitted by Registry Operators, Registrars, Registered Name Holders, and other Internet users (see Annex [include reference].

2. The specifically-identified data elements the EPDP Team recommends to be transferred are provided within the data elements workbook related to the purpose to handle contractual compliance monitoring requests, audits, and complaints submitted by Registry Operators, Registrars, Registered Name Holders, and other Internet users (see Annex [include reference]). These data elements are: [include following finalization of purpose F data elements workbook].

Question #3 for community input: Are there other data elements that are required to be transferred between registrars and registries / escrow providers that are necessary to achieve the purposes identified? If so, please provide the relevant rationale, keeping in mind compliance with the GDPR.

Charter Question

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?

EPDP Team considerations and deliberations in addressing the charter questions

- The EPDP Team considered both the input provided by each group in response to the triage surveys as well as the input provided by each group in response to the request for early input in relation to these questions.
- In the context of the purpose concerning lawful access for legitimate third-party interests (see Annex [include reference]), the EPDP Team considered both which data elements are to be published in a freely accessible directory and which data

elements are to be redacted. As a starting point, the EPDP Team considered the existing data-redaction list in the Temporary Specification (see Appendix A) and specifically questioned redaction requirements for:
    - Organization,
    - City,
    - Postal Code and
    - Email Address.
- In the context of the Organization field, the EPDP Team noted there is currently no consistency in relation to how that field is used by the Registered Name Holder. Furthermore, assuming that the intent of that field is to denote a legal person, the EPDP Team considered the importance of obtaining clarification in relation to the liability should a Registered Name Holder still choose to provide personally identifiable information within the Organization field. As such, the group will seek information regarding other GDPR-compliant regimes and input from DPAs regarding how similar data fields are handled. Following this clarification, the EPDP Team may review the recommendation below in relation to the organization data element.
- In the context of postal code and city, the EPDP Team discussed the role these data elements might play in narrowing down jurisdiction, but also observed that this information may also be obtained under the purpose to provide mechanisms for safeguarding Registered Name Holders' Registration Data.
- In relation to email communication, the EPDP Team considers that [to be completed].

EPDP Team Preliminary Rec #8.
The EPDP Team recommends that redaction must be applied as follows to the data elements that are collected. Data elements not redacted must appear in a freely accessible directory:

Data Element	Redacted
Domain Name	No
Registrar Whois Server	No
Registrar URL	No
Updated Date	No
Creation Date	No
Registry Expiry Date	No
Registrar Registration Expiration Date	No
Registrar	No
Registrar IANA ID	No
Registrar Abuse Contact Email	No
Registrar Abuse Contact Phone	No
Reseller	No

Domain Status	No
Registrant Fields	
• Name	Yes
• Organization (opt.)	No
• Street	Yes
• City	Yes[5]
• State/province	No
• Postal code	Yes
• Country	No[6]
• Phone	Yes
• Email	No[7]
Tech Fields	
• Name	Yes
• Phone	Yes
• Email	No
NameServer(s)	No
DNSSEC	No
Name Server IP Address	No
Last Update of Whois Database	No

EPDP Team Preliminary Rec #9.
The EPDP Team recommends that registrars provide further guidance to a Registered Name Holder concerning the information that is to be provided within the Organization field.

EPDP Team Preliminary Rec #10.
In relation to facilitating email communication, the EPDP Team recommends that [current requirements in the Temporary Specification which specify that a Registrar MUST provide an email address or a web form to facilitate email communication with the relevant contact, but MUST NOT identify the contact email address or the contact itself, remain in place / Other to be decided].

Question #4 for community input: Are there any changes that the EPDP Team should consider in relation to the redaction of data elements? If so, please provide the relevant rationale, keeping in mind compliance with the GDPR.

Charter Question
g) Data retention:

[5] The IPC and BC representatives on the EPDP Team are of the view that this data element should be unredacted.
[6] Idem
[7] Per the current temp spec requirement: 2.5.1. Registrar MUST provide an email address or a web form to facilitate email communication with the relevant contact, but MUST NOT identify the contact email address or the contact itself.

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 EDPB letter of 5 July 2018, what is the justification for retaining registration data beyond the term of the domain name registration?

EPDP Team considerations and deliberations in addressing the charter questions

- The EPDP Team considered both the input provided by each group in response to the triage surveys as well as the input provided by each group in response to the request for early input in relation to these questions.
- In addition, the EPDP Team reviewed the feedback that the European Data Protection Board provided in relation to data retention and took specific note of the following:

  "personal data shall be kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed (article 5(2) GDPR). This is a matter which has already been addressed repeatedly by both the WP29 and the EDPS.19 It is for ICANN to determine the appropriate retention period, and it must be able to demonstrate why it is necessary to keep personal data for that period. So far ICANN is yet to demonstrate why each of the personal data elements processed in the context of WHO IS must in fact be retained for a period of 2 years beyond the life of the domain name registration. The EDPB therefore reiterates the request ICANN to re-evaluate the proposed retention period of two years and to explicitly justify and document why it is necessary to retain personal data for this period in light of the purposes pursued"[8].

- For each of the purposes, the EPDP Team has identified in the data elements workbooks in Annex [include reference] the desired data retention period, including a rationale for why data needs to be retained for that period.

EPDP Team Preliminary Rec #11.
[The EPDP Team recommends that Registrars are required to retain the herein-specified data elements for a period of one year following the life of the registration. This retention period conforms to the specific statute of limitations within the Transfer Dispute Resolution Policy ("TDRP"). Other relevant parties, including Registries, escrow providers and ICANN Compliance, have separate retention periods less than or equal to one year accordingly and in line with the GDPR requirements.]

Question #5 for community input: Are there any changes that the EPDP Team should consider in relation to the data retention periods recommended? If so, please provide the relevant rationale, keeping in mind compliance with the GDPR.

[8] See https://www.icann.org/en/system/files/correspondence/jelinek-to-marby-05jul18-en.pdf

Charter Question

h) Applicability of Data Processing Requirements

h1) Should Registry Operators and Registrars ("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 Contracted Parties to treat legal and natural persons differently?

h5) What are the risks associated with differentiation of registrant status as legal or natural persons across multiple jurisdictions? (See EDPB letter of 5 July 2018).

EPDP Team considerations and deliberations in addressing the charter questions

- The EPDP Team considered both the input provided by each group in response to the triage surveys as well as the input provided by each group in response to the request for early input in relation to these questions.
- In relation to question h1, the EPDP Team agrees that contracted parties should be (and are) permitted to differentiate between registrants on a geographic basis; however, the EPDP Team does not agree that differentiation on a geographic basis should be required. Specifically, members of the BC, IPC and GAC [add others as appropriate] have expressed the view that contracted parties should be required to differentiate between registrants on a geographic basis. The Members expressing support for requiring differentiation between registrants on a geographic basis noted the following:
  1. When GDPR was adopted, the global nature of the DNS was not taken into account. It therefore may be shortsighted to just focus on GDPR.
  2. Applying GDPR to all registrants would undermine the ability of sovereign states to enforce their own laws and regulations within their respective jurisdictions.
  3. Businesses are generally required to take into account local laws when choosing to do business with various countries; therefore, cost is not necessarily a persuasive argument to not require differentiation.

The Members opposing requiring differentiation between registrants on a geographic basis noted the following:

1. The actual location of the registrant is not alone dispositive of whether GDPR applies especially because of the widespread industry use of additional processors (e.g., backend registry service providers for registry operators and backend registrar service providers and resellers). For example, if a registry operator that is not subject to GDPR is using a European registry service provider as a data processor, that registry service provider has to comply with GDPR. If a registrar that is not subject to GDPR has a reseller that is subject to

GDPR, either because it is located in Europe or offers services to European data subjects, that registrar would need to comply with GDPR. If a registrar uses another registrar as a service provider to run the technical operations of its registrar business, the same complexity exists.

2. The actual location of the registrant is not alone dispositive of whether GDPR applies especially because of the widespread industry use of additional processors (e.g., backend registry service providers for registry operators and backend registrar service providers and resellers).
3. Data subjects need to be informed at the time of collection about how their personal data is being processed, i.e., what data is collected, to whom it is transferred, how long it is stored, etc. Not having a common approach for all registrants could lead to two classes of registrants, which may result in competitive advantages to certain registrars/registries (due to their establishment in jurisdictions with privacy protection), fragmentation in the marketplace and interoperability issues.
4. It is often difficult to identify a registrant's applicable jurisdiction with sufficient certainty to apply appropriate data protection rules. A differentiated treatment based on geographic location has a high likelihood of an adverse effect on the data subject's data privacy rights through publication.
5. There are significant liability implications for Contracted Parties if they are incorrect in applying the appropriate data protection rules. Contracted parties should be free to choose whether or not to take that risk as a business decision rather than a contractual requirement."
6. Any consensus policy needs to be commercially reasonable and implementable, and in the current market place, differentiation based on geographic location will be difficult to scale, costly, and, accordingly, neither commercially reasonable nor implementable.

- In relation to question h2, the EPDP Team agreed that there is a legal basis for contracted parties to differentiate b/w registrants on a geographic basis. However, the location of the registrant alone is not a dispositive indicator if the GDPR applies. If the controller or any processor is within the EU, the GDPR will also apply.

Members of the BC [add others as appropriate] have requested ICANN, in conjunction with interested community members, explore the feasibility of a mechanism allowing geographic differentiation (such as the EWG rules engine). [Other members of Small Team #2 did not agree to this request – to be updated, as appropriate.]

Although the law does distinguish between EEA and non EEA data, any policy must be feasible and implementable. Given the current system and taking into account current technology and policy expectations, the inability to differentiate such data to any level of certainty, and prohibitively high implementation costs, liability risk remains too high, rendering a forced differentiation unenforceable and unimplementable.

- In relation to questions h3 and h5, the EPDP Team agrees that contracted parties should be allowed to treat legal and natural persons differently but the mechanism by which this should or can be done should be further explored. Furthermore, the EPDP Team noted that under GDPR, there is a legal basis for doing so. While the focus of this EPDP is GDPR compliance, the EPDP Team did note that not all jurisdictions have this same distinction, so any policy recommendations would need to be flexible enough to take this into account.
- In relation to question h5, the EPDP Team observed that the main risk seems to be that while legal persons don't have the same protections under GDPR, natural persons employed by a legal person (and who may be designated as the registrant, admin or technical contact) are still natural persons with rights/protection under GDPR. This risk may be minimized through educational resources as recommended below. [risks to be further fleshed out].

EPDP Team Preliminary Rec #12.

The EPDP Team recommends that:

- The distinction between legal and natural persons is useful and necessary for GDPR and some other data protection laws.
  - However, the EPDP Team recognizes that there are challenges in making this distinction in the context of domain name registrations as well as the potential implementation of any new functionality that would apply to pre-existing registrations.
  - Additionally, other jurisdictions may have other categories of protected groups or other requirements that would need to be factored in.

EPDP Team Preliminary Rec #13.

- The EPDP Team recommends that GDD staff who will be tasked with the implementation of these policy recommendations commence research by investigating how ccTLDs and contracted parties currently distinguish between natural and legal persons to inform the EPDP Team. This research is being authorized by this Initial Report and can start at the earliest convenience of the GDD staff.

- Following the receipt of the research, the EPDP Team will explore in a timely manner how this distinction can be made in the context of domain name registrations in a satisfactory way.
  - The EPDP Team should also consider the timeline needed to implement, which could follow a phased approach whereby implementation would start immediately following completion of the further work and agreement on a satisfactory manner to distinguish between legal and natural persons for new registrations while existing registrations would be phased in upon renewal or by other means.
  - The EPDP Team should also consider which data fields (if any) need to be added to accomplish this distinction. This could require further liaising with the IETF if data fields in RDAP need to be added or changed.

EPDP Team Preliminary Rec #14.

- The EPDP Team recommends that, as a best practice, registries, registrars and ICANN each develop (educational) resources available that help registrants understand the distinction between a domain name that is registered by a natural person vs. legal person / entity. These resources and communications should also encourage legal persons to provide non-personal information for their email address and other contact information.

Question #6 for community input: Are there any other aspects in relation to natural vs. legal person as well as geographic application that the EPDP Team should consider? If so, please provide the relevant rationale as well as how this would affect possible recommendations in these areas, keeping in mind compliance with the GDPR.

i) Transfer of data from registry to Emergency 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?

EPDP Team considerations and deliberations in addressing the charter questions

- The EPDP Team considered both the input provided by each group in response to the triage surveys as well as the input provided by each group in response to the request for early input in relation to these questions.
- [Update following the completion of the data elements workbook for purpose E - EBERO]

EPDP Team Preliminary Rec #15.

The EPDP Team recommends that [update following completion of workbook for purpose E – EBERO]

Charter Question

j). Temporary Specification and Reasonable Access

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

A. If so:

1. Under Section 4 of Appendix A of the Temporary Specification, what is meant by "reasonable access" to Non-Public data?
2. 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)?

B. If not:

1. 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 further clarified and/or better defined through 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?

EPDP Team considerations and deliberations in addressing the charter questions

- The EPDP Team considered both the input provided by each group in response to the triage surveys as well as the input provided by each group in response to the request for early input in relation to these questions.

EPDP Team Preliminary Rec #16.

The EPDP Team recommends that the current requirements in the Temporary Specification in relation to reasonable access remain in place until work on a system for Standardized Access to Non-Public Registration Data has been completed, noting that the term should be modified to refer to "parameters for responding to lawful disclosure requests." Furthermore, the EPDP Team recommends that criteria around the term "reasonable" are further explored as part of the implementation of these policy recommendations addressing:

- [Practicable]* timelines criteria for responses to be provided by Contracted Parties;
- Format by which requests should be made and responses are provided;
- Communication/Instructions around how and where requests should be submitted;
- Requirements for what information responses should include (for example, auto-acknowledgement of requests and rationale for rejection of request);
- Logging of requests.

[*Some concern expressed that timeliness that should not be translated into requirements that are impractical for contracted parties]

Question #7 for community input: Are there any changes that the EPDP Team should consider in relation to its recommendations in relation to "reasonable access"? If so, please provide the relevant rationale, keeping in mind compliance with the GDPR.

Part 3: Data Processing Terms

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) In addition to any specific duties ICANN may have as data controller, what other obligations should be noted by this EPDP Team, including any duties to registrants that are unique and specific to ICANN's role as the administrator of policies and contracts governing gTLD domain names?

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?

EPDP Team considerations and deliberations in addressing the charter questions

- The EPDP Team considered both the input provided by each group in response to the triage surveys as well as the input provided by each group in response to the request for early input in relation to these questions.
- Through its work on the data elements workbooks, the EPDP Team has identified the following for each of the purposes: (1) responsible party/parties, and (2) which party/parties is/are involved in the relevant processing steps, see Annex [include reference].
- The EPDP Team considered that the GDPR states that:

"'[C]ontroller' means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data; where the purposes and means of such

processing are determined by Union or Member State law, the controller or the specific criteria for its nomination may be provided for by Union or Member State law;

'[P]rocessor' means a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller;

(…)

Joint Controllers –

1. Where two or more controllers jointly determine the purposes and means of processing, they shall be joint controllers. They shall in a transparent manner determine their respective responsibilities for compliance with the obligations under this Regulation, in particular as regards the exercising of the rights of the data subject and their respective duties to provide the information referred to in Articles 13 and 14, by means of an arrangement between them unless, and in so far as, the respective responsibilities of the controllers are determined by Union or Member State law to which the controllers are subject. The arrangement may designate a contact point for data subjects.
2. The arrangement referred to in paragraph 1 shall duly reflect the respective roles and relationships of the joint controllers vis-à-vis the data subjects. The essence of the arrangement shall be made available to the data subject.
3. Irrespective of the terms of the arrangement referred to in paragraph 1, the data subject may exercise his or her rights under this Regulation in respect of and against each of the controllers."

- Furthermore, the EPDP Team considered that:

"Where two or more controllers determine the purposes and means of processing, they are joint controllers (Article 26). Under the GDPR joint controllers have to determine their respective responsibilities for legal compliance and rights of data subjects in a transparent manner. They can do so for example in a clear contractual arrangement.

The arrangement needs to reflect the roles and relationships between the joint controllers and made available to data subjects. A data subject may exercise his or her rights against each of the controllers. Each data controller is individually liable for legal compliance under Article 82. After providing remedies to data subjects, a joint controller may claim its losses from other joint controllers or processors, if applicable, according to its roles and responsibilities in the processing at stake".[9]

- Similarly, the EPDP Team considered the lawfulness of processing as stated in the GDPR, specifically the following lawful basis:

[9] see https://www.futurelearn.com/courses/general-data-protection-regulation/0/steps/32432

"(a) the data subject has given consent to the processing of his or her personal data for one or more specific purposes;

(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;

(…)

(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.[10]"

- As noted below, there was some disagreement within the EPDP Team in relation to when Art. 6(1)b applies; namely, does the reference 'to which the data subject is party' limit the use of this lawful basis to registrars only as they have the direct contractual relationship with the Registered Name Holder? Similarly, in relation to Art. 6(1)(b), questions arose regarding how to apply "necessary for the performance of a contract"; specifically, does this clause solely relate to the registration and activation of a domain, or, alternatively, could related activities such as fighting DNS abuse also be considered necessary for the performance of a contract? The EPDP Team plans to put these questions forward to the European Data Protection Board (EDPB) to obtain further clarity in order to help inform its deliberations.

EPDP Team Preliminary Rec #17.
The EPDP Team recommends that the policy includes the following data processing activities as well as responsible parties:

ICANN PURPOSE:
As subject to Registry and Registrar terms, conditions and policies, and ICANN Consensus Policies:

- To establish the rights of a Registered Name Holder in a Registered Name; to ensure that a Registered Name Holder may exercise its rights in the use and disposition of the Registered Name; and
- To activate a registered name and allocate it to a Registered Name Holder.

Processing Activity	Responsible Party:	Lawful Basis:
Collection	ICANN – Joint Controller	6(1)(b) for Registrars

[10] See https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0679&from=EN

	Registrars – Joint Controller Registries – Joint Controllers	6(1)(f) for Registries[11]
Transmission from Rr to Ry	ICANN – Joint Controller Registrars – Processor Registries – Joint Controllers	Certain data elements (domain name and nameservers) would be required to be transferred from the Registrar to Registry. The lawful basis would be 6(1)b, should personal data be involved. For other data elements, Art. 6(1)(f) of the GDPR.[12]
Disclosure	ICANN - Controller Registrars – Processor	Activation of the domain name registration in the DNS requires disclosure of certain data elements, namely domain name and name servers. The lawful basis would be 6(1)b, should personal data be involved.
Data Retention	ICANN - Controller Registrar - Processor	6(1)(f)

ICANN PURPOSE:
Maintaining the security, stability and resiliency of the Domain Name System In accordance with ICANN's mission through the enabling of lawful access for legitimate third-party interests to data elements collected for other purposes identified herein.

Processing Activity	**Responsible Party:**	**Lawful Basis:**
Collection	ICANN – Controller Registrars – Controller Registries – Controller	6(1)(f)
Transmission from Rr to Ry	N/A	N/A
Disclosure	ICANN – Controller Registrar – Controller Registry - Controller	6(1)(f)

[11] Members of the BC and IPC expressed the view that Purpose A is 6(1)(b) for all processing activities, including Registries checking on patterns of abuse as protecting against abuse is considered necessary for performance of a contract.
[12] Idem

Data Retention	ICANN - Controller Registrar – Processor	6(1)(f)

ICANN PURPOSE: Enable communication with and/or notification to the Registered Name Holder and/or their delegated agents of technical and/or administrative issues with a Registered Name		
Processing Activity	**Responsible Party:**	**Lawful Basis:**
Collection	ICANN - Joint Controller Registrar - Joint Controller Registries - Joint controller	6(1)(b) for Registrars 6(1)(f) for Registries
Transmission from Rr to Ry	ICANN – Joint Controller Registrars – Processor Registries – Joint Controllers	6(1)(f)
Disclosure	TBD	
Data Retention	ICANN - Controller	6(1)(f)

ICANN PURPOSE: Provide mechanisms for safeguarding Registered Name Holders' Registration Data in the event of a business or technical failure, or other unavailability of a Registrar or Registry Operator		
Processing Activity	**Responsible Party:**	**Lawful Basis**
Collection	ICANN – Sole Controller Registrars - Processor	6(1)(f)[13]
Transmission from Rr to Ry	ICANN - Controller Registrars – Processor Data Escrow Agent - Processor	6(1)(f)
Disclosure	ICANN - Controller Registrars - Processor	6(1)(f)
Data Retention	ICANN - Controller Data Escrow Agent - Processor	6(1)(f)

[13] The BC and IPC expressed the view that collection for this purpose would use 6(1)(b) as a lawful basis because safeguarding registrants in the event of business failure is necessary for the performance of the contract, and a registrant would expect their data to be escrowed accordingly.

ICANN PURPOSE:
Handle contractual compliance monitoring requests, audits, and complaints submitted by Registry Operators, Registrars, Registered Name Holders, and other Internet users.

Processing Activity	Responsible Party:	Lawful Basis:
Collection	ICANN – Controller Registries - Processor Registrars - Processor	6(1)(f)[14]
Transmission from Rr to Ry	ICANN – Controller Registries - Processor Registrars - Processor	6(1)(f)
Disclosure	N/A	
Data Retention	ICANN - Controller	6(1)(f)

ICANN PURPOSE:
Coordinate the development and implementation of policies for resolution of disputes regarding the registration of domain names

Processing Activity	Responsible Party:	Lawful Basis:
Collection	ICANN – Controller Registrars - Processor	6(1)(b) for Registrars 6(1)(f) for Registries
Transmission from Rr to Ry	ICANN – Controller Registries - Processor Registrars - Processor	6(1)(b) for Registrars 6(1)(f) for Registries
Transmission to dispute resolution providers	ICANN - Controller Registries - Processor Registrars – Processor Dispute Resolution Provider – Processor	6(1)(f)
Disclosure		
Data Retention		

ICANN PURPOSE:
Enabling validation of Registered Name Holder satisfaction (fulfillment) of gTLD registration policy eligibility criteria.

Processing Activity	Responsible Party:	Lawful basis:

[14] Most agreed that 6(1)(f) is an appropriate lawful basis for the compliance purpose; some (BC and IPC representatives) believe that 6(1)(b) may also apply. Some concerns were expressed that 6(1)(f) may cause issues where the controller determines that the privacy rights outweigh the legitimate interest and therefore data cannot be provided.

Collecting specific data for Registry Agreement-mandated eligibility requirements	ICANN – Joint Controller Registries – Joint Controllers Registrars – Processor	6(1)(b) for Registrars 6(1)(f) for Registries
Collecting specific data for Registry Operator-adopted eligibility requirements	ICANN – Not Involved Registry - Sole Controller Registrar - Processor	6(1)(b) for Registrars 6(1)(f) for Registries
Transmission from Rr to Ry RA-mandated eligibility requirements	ICANN - Joint Controller Registry - Joint Controller Registrar - Processor	6(1)(b) for Registrars 6(1)(f) for Registries
Transmission from Rr to Ry Registry-adopted eligibility requirements	ICANN - Not Involved Registry - Sole Controller Registrar - Processor	6(1)(b) for Registrars 6(1)(f) for Registries
Disclosure	TBD	
Data Retention	TBD	

EPDP Team Preliminary Rec #18.
[The EPDP Team recommends that identification of Data Controllers & Processors or other recommendations made in this report will not affect "No Third-Party Beneficiary" clauses in existing ICANN-Contracted Party agreements.]

Question #8 for community input: Are there any changes that the EPDP Team should consider in relation to the responsibility designations as well as lawful basis identified? If so, please provide the relevant rationale, keeping in mind compliance with the GDPR.

Part 4: Updates to Other Consensus Policies

Charter Question
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?

EPDP Team considerations and deliberations in addressing the charter questions

- The EPDP Team considered both the input provided by each group in response to the triage surveys as well as the input provided by each group in response to the request for early input in relation to these questions.
- The EPDP Team noted that as of the Team's deliberations, no significant issues have been reported in relation to the functioning and operation of the URS and UDRP following the adoption of the Temporary Specification. The EPDP Team also took note of the fact that an existing GNSO PDP WG, namely the Review of All Rights Protection Mechanisms in All gTLDs (RPMs) PDP WG, is currently tasked with reviewing the URS and UDRP and is expected to factor in any changes resulting from GDPR requirements.
- The EPDP Team observed that the reference in the Temporary Specification to 'in another mechanism' was unclear. As such, this language should be clarified, possibly by adding 'determined by the EPDP Team' to clarify that the EPDP Team may develop or recommend as part of its discussions on a standardized access framework (once the Charter's gating questions have been addressed) another mechanism by which full Registration Data is expected to be made available by the Registry Operator.

EPDP Team Preliminary Rec #19.
The EPDP Team recommends that for the new policy on gTLD registration data, the requirements of the Temporary Specification are maintained in relation to URS and UDRP until such time as these are superseded by recommendations from the RPMs PDP WG (if any).

EPDP Team Preliminary Rec #20.
The EPDP Team recommends that the GNSO Council instructs the review of all RPMs PDP WG to consider, as part of its deliberations, whether there is a need to update existing requirements to clarify that a complainant must only be required to insert the publicly-available RDDS data for the domain name(s) at issue in its initial complaint. The EPDP Team also recommends the GNSO Council to instruct the RPMs PDP WG to consider whether upon receiving updated RDDS data (if any), the complainant must be given the opportunity to file an amended complaint containing the updated respondent information.

EPDP Team Preliminary Rec #21.
The EPDP Team requests that when the EPDP Team commences its deliberations on a standardized access framework, a representative of the RPMs PDP WG shall provide an update on the current status of deliberations so that the EPDP Team may determine

if/how the WG's recommendations may affect consideration of the URS and UDRP in the context of the standardized access framework deliberations.

EPDP Team Preliminary Rec #22.
The EPDP Team recommends that ICANN Org should enter into data processing agreements with dispute resolution providers in which, amongst other items, the data retention period is specifically addressed, as this will affect the ability in having publicly-available decisions.

Question #9 for community input: Are there any changes that the EPDP Team should consider in relation to the URS and UDRP that have not already been identified? If so, please provide the relevant rationale, keeping in mind compliance with the GDPR.

Charter Question
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?

EPDP Team considerations and deliberations in addressing the charter questions

- The EPDP Team considered both the input provided by each group in response to the triage surveys as well as the input provided by each group in response to the request for early input in relation to these questions.
- The EPDP Team noted that as of the Team's deliberations, no significant issues have been reported in relation to the functioning and operation of the Transfer Policy, although some indicated that based on anecdotal evidence, the number of hijacking incidents may have gone down as the result of the registrant email address no longer being published, while others pointed to increased security risks as a result of those changes.
- The EPDP Team also took note of the fact that a review of the Transfer Policy has commenced which, in addition to including an overall review of the Transfer Policy, also includes additional information as to how the GDPR and the Temporary Specification requirements have affected inter-registrar transfers.

EPDP Team Preliminary Rec #23.
The EPDP Team recommends that for the new policy on gTLD registration data, the requirements of the Temporary Specification are maintained in relation to the Transfer Policy until such time these are superseded by recommendations that may come out of the Transfer Policy review that is being undertaken by the GNSO Council.

EPDP Team Preliminary Rec #24.
The EPDP Team recommends that the GNSO Council, as part of its review of the Transfer Policy, specifically requests the review of the implications, as well as adjustments, that may be needed to the Transfer Policy as a result of GDPR.

Question #10 for community input: Are there any changes that the EPDP Team should consider in relation to the URS and UDRP that have not already been identified? If so, please provide the relevant rationale, keeping in mind compliance with the GDPR.

Charter Question

q) Sunsetting WHOIS Contractual Requirements

q1) After migration to RDAP, when can requirements in the 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 the Contracts to use WHOIS protocol be eliminated?

Other recommendations

EPDP Team Preliminary Rec #25.
The EPDP Team recommends that ICANN Org enters into the required data protection agreements such as a Data Processing Agreement (GDPR Art. 28) or Joint Controller Agreement (Art. 26), as appropriate, with other entities involved in registration data processing such as Contracted Parties, data escrow providers and EBERO providers. These agreements are expected to set out the relationship obligations and instructions for data processing between the different parties.

EPDP Team Preliminary Rec #26.
[The EPDP Team recommends that as part of the implementation of these policy recommendations, updates are made to the following existing policies / procedures, and any others that may have been omitted, to ensure consistency with these policy recommendations as a number of these refer to administrative and/or technical contact which will no longer be required data elements:

- Registry Registration Data Directory Services Consistent Labeling and Display Policy
- Thick WHOIS Transition Policy for .COM, .NET, .JOBS

- Rules for Uniform Domain Name Dispute Resolution Policy
- WHOIS Data Reminder Policy
- Transfer Policy
- Uniform Rapid Suspension System (URS) Rules]

Implementation

[Although the objective is to keep the timeframe for implementation to a minimum, additional time will be necessary to implement these policy recommendations. As such, the EPDP Team is considering how to avoid a gap between the adoption of these policy recommendations by the ICANN Board and the subsequent implementation, noting the

impending expiration of the Temporary Specification requirements. The EPDP Team is considering various options, such as the adoption of an interim policy in the form of the Temporary Specification for a set timeframe or recommending that the Temporary Specification requirements remain in place until the completion of implementation of these policy recommendations. The EPDP Team expects to obtain further guidance from ICANN Org on the options in this regard and make a recommendation accordingly in the Final Report.]

EPDP Team's Policy Change Impact Analysis

[If the WG concludes with any recommendations, the EPDP must include a policy impact analysis and a set of metrics to measure the effectiveness of the policy change, including source(s) of baseline data for that purpose (from the EPDP Team Charter:

- Determine the policy goals for this exercise, within the parameters set by the Temporary Interim Specification.
- Identify potential policy goals that were omitted in the Temporary Specification and set aside for further Council deliberation.
- Determine a set of questions which, when answered, provide the insight necessary to achieve the policy goals.
- Determine the types of data that may assist the WG in better scoping the issues and identify whether it can be collected within the timeframe, and assemble or substitute information that can be analyzed to help answer each question.
- Determine a set of metrics which can be applied to the data, analysis, and achievement of policy objectives. Collect this data to the extent feasible, and determine a process for ongoing metric analysis and program evaluation to measure success of this policy process.
-
- [Per the EPDP Team's Charter, the goal of this effort is 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 elements of the Temporary Specification as outlined in the charter and answer the 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 those related to registration data, are reassessed to become consistent with applicable law".

The EPDP Team will further consider a set of metrics to help inform the evaluation to measure success of these policy recommendations, but would welcome input during the public comment period on the set of metrics that should be considered.]

4 Next Steps

Next Steps

The EPDP Team will complete the next phase of its work and develop its recommendations in a Final Report to be sent to the GNSO Council for review following its analysis of public comments received on this Initial Report.

■

5 Annex A - Background

6 Process Background

On 19 July 2018, the GNSO Council initiated an Expedited Policy Development Process (EPDP) and chartered the EPDP on the Temporary Specification for gTLD Registration Data Team. Unlike other GNSO PDP efforts, which are open for anyone to join, the GNSO Council chose to limit the membership composition of this EPDP, primarily in recognition of the need to complete the work in a relatively short timeframe and to resource the effort responsibly. GNSO Stakeholder Groups, the Governmental Advisory Committee (GAC), the Country Code Supporting Organization (ccNSO), the At-Large Advisory Committee (ALAC), the Root Server System Advisory Committee (RSSAC) and the Security and Stability Advisory Committee (SSAC) were each been invited to appoint up to a set number of members and alternates, as outlined in the charter. In addition, the ICANN Board and ICANN Org have been invited to assign a limited number of liaisons to this effort. A call for volunteers to the aforementioned groups was issued in July, and the EPDP Team held its first meeting on 1 August 2018.

a.

7 Issue 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 ("Contracts"). The Temporary Specification provides modifications to existing requirements in the Registrar Accreditation and Registry Agreements in order to comply with the European Union's General Data Protection Regulation ("GDPR"). Following adoption of a temporary specification, the procedure for Temporary Policies as outlined in the Registrar Accreditation and Registry Agreements, provides the Board "shall immediately implement the Consensus Policy development process set forth in ICANN's Bylaws". Additionally, the procedure provides this Consensus Policy development process on the Temporary Specification must be carried out within a one-year period as the Temporary Specification can only remain in force for up to one year, from the effective date of 25 May 2018, i.e., the Temporary Specification will expire on 25 May 2019.

On 19 July 2018, the GNSO Council initiated an Expedited Policy Development Process (EPDP) and chartered the EPDP on the Temporary Specification for gTLD Registration Data Team. The EPDP Team held its first meeting on 1 August 2018.

b.

8 Annex B – EPDP Team Membership and Attendance

9 EPDP Team Membership and Attendance

The members of the EPDP TEAM are:

	Members / Liaisons	Affiliation	SOI	% of Meetings Attended
1	Alan Woods	RySG	SOI	
2	Kristina Rosette	RySG	SOI	
3	Marc Anderson	RySG	SOI	

4	James M. Bladel	RrSG	SOI	
5	Matt Serlin	RrSG	SOI	
6	Emily Taylor	RrSG	SOI	
7	Alex Deacon	IPC	SOI	
8	Diane Plaut	IPC	SOI	
9	Margie Milam	BC	SOI	
10	Mark Svancarek	BC	SOI	
11	Esteban Lescano	ISPCP	SOI	
12	Thomas Rickert	ISPCP	SOI	
13	Stephanie Perrin	NCSG	SOI	
14	Ayden Férdeline	NCSG	SOI	
15	Milton Mueller	NCSG	SOI	
16	Julf Helsingius	NCSG	SOI	
17	Amr Elsadr	NCSG	SOI	
18	Farzaneh Badiei	NCSG	SOI	
19	Georgios Tselentis	GAC	SOI	
20	Kavouss Arasteh	GAC	SOI	
21	Ashley Heineman	GAC	SOI	

22	Alan Greenberg	ALAC	SOI	
23	Hadia Elminiawi	ALAC	SOI	
24	Benedict Addis	SSAC	SOI	
25	Ben Butler	SSAC	SOI	
26	Chris Disspain	ICANN Board Liaison	SOI	
27	Leon Felipe Sanchez	ICANN Board Liaison	SOI	
28	Rafik Dammak	GNSO Council Liaison	SOI	
29	Trang Nguyen	ICANN Org Liaison (GDD)	SOI	
30	Dan Halloran	ICANN Org Liaison (Legal)	n/a	
31	Kurt Pritz	EPDP Team Chair	SOI	

	Alternates	Affiliation	SOI	% of Meetings Attended
1	Beth Bacon	RySG	SOI	
2	Arnaud Wittersheim	RySG	SOI	
3	Sebastien Ducos	RySG	SOI	
4	Volker Greimann	RrSG	SOI	
5	Lindsay Hamilton-Reid	RrSG	SOI	
6	Theo Geurts	RrSG	SOI	
7	Brian King	IPC	SOI	
8	Steve DelBianco	BC	SOI	
9	Fiona Assonga	ISPCP	SOI	
10	Tatiana Tropina	NCSG	SOI	
11	David Cake	NCSG	SOI	
12	Collin Kurre	NCSG	SOI	
13	Chris Lewis-Evans	GAC	SOI	
14	Rahul Gosain	GAC	SOI	
15	Laureen Kapin	GAC	SOI	
16	Holly Raiche	ALAC	SOI	
17	Seun Ojedeji	ALAC	SOI	

18	Greg Aaron	SSAC	SOI	
19	Rod Rasmussen	SSAC	SOI	

The detailed attendance records can be found at https://community.icann.org/x/4opHBQ.

The EPDP Team email archives can be found at https://mm.icann.org/pipermail/gnso-epdp-team/.

* The following are the ICANN SO/ACs and GNSO Stakeholder Groups and Constituencies for which EPDP TEAM members provided affiliations:
RrSG – Registrar Stakeholder Group
RySG – Registry Stakeholder Group
CBUC – Commercial and Business Users Constituency
NCSG – Non-Commercial Stakeholder Group
IPC – Intellectual Property Constituency
ISPCP – Internet Service and Connection Providers Constituency
GAC – Governmental Advisory Committee
ALAC – At-Large Advisory Committee
SSAC – Security and Stability Advisory Committee

10 Annex C - Community Input

11 Request for Input

According to the GNSO's PDP Manual, an EPDP Team should formally solicit statements from each GNSO Stakeholder Group and Constituency at an early stage of its deliberations. An EPDP Team is also encouraged to seek the opinion of other ICANN Supporting Organizations and Advisory Committees who may have expertise, experience or an interest in the issue. As a result, the EPDP Team reached out to all ICANN Supporting Organizations and Advisory Committees as well as GNSO Stakeholder Groups and Constituencies with a request for input at the start of its deliberations. In response, statements were received from:

- The GNSO Business Constituency (BC)
- The GNSO Intellectual Property Constituency (IPC)
- The GNSO Non-Commercial Stakeholder Group (NCSG)
- The Registries Stakeholder Group (RySG)
- The At-Large Advisory Committee (ALAC)
- The Governmental Advisory Committee (GAC)
- The Security and Stability Advisory Committee (SSAC)

The full statements can be found here: https://community.icann.org/x/Ag9pBQ.

12 Review of Input Received

All of the statements received were added to the Discussion Summary Index for the corresponding section in the Temporary Specification (where applicable) and reviewed by the EPDP Team as part of its deliberations on that particular topic.

13 Annex D – Data Elements Workbooks

[Include Data Elements Workbooks once completed]