

## Executive Summary - Initial Report of the Temporary Specification for gTLD Registration Data Expedited Policy Development Process

21 Nov 2018

### Status of This Document

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

#### *Note on Translations*

*This document has been translated from English in order to reach a wider audience. While the Internet Corporation for Assigned Names and Numbers (ICANN) has made efforts to verify the accuracy of the translation, English is the working language of ICANN and the English original of this document is the only official and authoritative text. Please note that this Executive Summary is only one chapter of the full report, which is only available in English and can be found at <http://gns0.icann.org/>.*

## Table of Contents

|  |          |
|--|----------|
| <b>1 EXECUTIVE SUMMARY</b>                       | <b>3</b> |
| <b>2 OVERVIEW OF PRELIMINARY RECOMMENDATIONS</b> | <b>5</b> |

# 1 Executive Summary

On 17 May 2018, the ICANN Board of Directors (ICANN Board) adopted the [Temporary Specification for generic top-level domain \(gTLD\) Registration Data](#)<sup>1</sup> (“Temporary Specification”). 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”)<sup>2</sup>. In accordance with the ICANN Bylaws, 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. In accordance with the Charter, EPDP team membership is limited. However, all ICANN Stakeholder Groups, Constituencies and Supporting Organisations are represented on the EPDP Team.

The charter calls on the EPDP to determine if the Temporary Specification for gTLD Registration Data should become an ICANN Consensus Policy as is, or with modifications. In addition, the result must comply with the GDPR and also take into account other relevant privacy and data protection laws. Additionally, the EPDP Team’s charter requires discussion of a standardized access model to nonpublic registration data, at a time after the policy recommendations and consideration of specified “gating questions” are completed.

This Initial Report contains the preliminary recommendations of the EPDP Team and a set of questions for public review and comment. In the Initial Report, the EPDP Team also examined and made recommendations regarding: (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.

The Initial Report also provides preliminary recommendations and questions for the public to consider: (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

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<sup>1</sup> Because the Temporary Specification is central to the EPDP Team’s work, readers unfamiliar with the Temporary Specification may wish to read it before reading this Initial Report to gain a better understanding of and context for this Initial Report.

<sup>2</sup> The GDPR can be found at <https://eur-lex.europa.eu/eli/reg/2016/679/oj>; for information on the GDPR see, <https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/lawful-basis-for-processing/contract/>

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”), and (vi) future work by the GNSO to ensure relevant Consensus Policies are reassessed to become consistent with applicable law.

The EPDP Team reached tentative agreement on many of these recommendations but there was no formal consensus call made. Team members did not reach agreement on many other areas of discussion. The Report describes areas of disagreement and provides specific questions for public consideration and comment.

To develop a firm understanding of GDPR requirements and of the data processing that occurs in the Domain Name System’s ecosystem, the EPDP Team took the time to document each of the data processing steps, and the purpose and the legal basis for each. This foundational work was necessary for the Team to develop GDPR-compliant solutions and can be reviewed in the Report’s Appendix.

Following the publication of this Report, the EPDP Team will: (i) continue to seek guidance on legal issues from the European Data Protection Board and others, (ii) carefully review public comments received in response to this publication, (iii) continue to review the work-in-progress with the community groups the Team members represent, (iv) carry on deliberations for the production of a Final Report that will be reviewed by the GNSO Council and, if approved, forwarded to the ICANN Board of Directors for approval as an ICANN Consensus Policy.

## 2 Overview of Preliminary Recommendations

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 Proposed Responses to the Charter Questions & Preliminary Recommendations.

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.<sup>3</sup> Where applicable, the EPDP Team has noted where positions within the Team differ.

Taking that into account, the EPDP Team is putting forward the following preliminary recommendations and related questions for community consideration:

### **EPDP Team Preliminary Rec #1.**

The EPDP Team recommends that the following purposes for processing gTLD Registration Data form the basis of the new ICANN 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 legitimate third-party interests to data elements collected for the 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;

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<sup>3</sup> Following a review of public comments, the EPDP Team will take a formal consensus call before producing its Final Report.

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, RRDRP, and future-developed domain name registration-related dispute procedures for which it is established that the processing of personal data is necessary; and
7. Enabling validation to confirm that Registered Name Holder meets optional gTLD registration policy eligibility criteria voluntarily adopted by Registry Operator.

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 D.

**Question #1 for community input: Are these purposes sufficiently specific and, if not, how do you propose to modify them? Please provide a rationale, keeping in mind compliance with GDPR. Should any purposes be added? If so, please identify the proposed additional purposes and provide a rationale for including them, keeping in mind compliance with GDPR.**

#### **EPDP Team Preliminary Rec #2.**

Per the EPDP Team Charter, the EPDP Team is committed to considering a system for Standardized Access to non-public Registration Data once the gating questions in the charter have been answered. This will include addressing questions such as:

- What are the legitimate purposes for third parties to access registration data?
- What are the eligibility criteria for access to non-public Registration data?
- Do those parties/groups consist of different types of third-party requestors?
- What data elements should each user/party have access to?

In this context, amongst others, disclosure in the course of intellectual property infringement and DNS abuse cases will be considered.

#### **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.<sup>4</sup>

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<sup>4</sup> The topic of accuracy as related to GDPR compliance is expected to be considered further, as well as the WHOIS Accuracy Reporting System.

**EPDP Team Preliminary Rec #4.**

The EPDP Team recommends that the data elements defined in the data elements workbooks in Annex D are required to be collected by registrars. In the aggregate, this means that the following data elements are to be collected<sup>5</sup> (or automatically generated):

| <b>Data Elements (Collected and Generated)</b>  |
|---|
| <b><i>Note: Data Elements indicated with ** are generated either by the Registrar or the Registry</i></b> |
| Domain Name**   |
| Registry Domain ID**  |
| Registrar Whois Server**  |
| Registrar URL**   |
| Updated Date**  |
| Creation Date**   |
| Registry Expiry Date**  |
| Registrar Registration Expiration Date**  |
| Registrar**   |
| Registrar IANA ID**   |
| Registrar Abuse Contact Email**   |
| Registrar Abuse Contact Phone**   |
| Reseller**  |
| Domain Status**   |
| Registry Registrant ID**  |
| Registrant Fields:  |
| · Name  |
| · Organization (optional)   |
| · Street  |
| · City  |
| · State/province  |
| · Postal code   |
| · Country   |
| · Phone   |
| · Phone ext (optional)  |
| · Fax (optional)  |
| · Fax ext (optional)  |
| · Email   |

|   |
|---|
| Tech ID (optional)  |
| Tech Fields:  |
| <ul style="list-style-type: none"> <li>Name (optional)</li> </ul>   |
| <ul style="list-style-type: none"> <li>Phone (optional)</li> </ul>  |
| <ul style="list-style-type: none"> <li>Email (optional)</li> </ul>  |
| Name Server   |
| DNSSEC (optional)   |
| Name Server IP Address**  |
| Last Update of Whois Database**   |
| Additional optional 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] |

For further details, see [complete data elements matrix](#).

In addition, the EPDP Team recommends that the following data elements are optional for the Registered Name Holder to provide: technical contact name, email, and phone number. (Note: the EPDP Team is still considering whether optional also means optional for the registrar to offer the ability to the Registered Name Holder to provide these data elements, or whether it would be required for the registrar to offer this ability).

In either case, if the Registrar optionally provides this option or is required to provide this option, 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.

**Question #2 for community input: Are the data elements recommended as required for registrar collection necessary for the purposes identified? If not, why not? Are any data elements missing that are necessary to achieve the purposes identified? If so, please provide the missing data element(s) and a rationale, keeping in mind compliance with the GDPR.**

#### **EPDP Team Preliminary Rec #5.**

The EPDP Team recommends 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. In the aggregate, these data elements are:



| <b>Data Elements (Collected and Generated)</b>   |
|--|
| <b>Note: Data Elements indicated with ** are generated either by the Registrar or the Registry</b> |
| Domain Name**  |
| Registry Domain ID**   |
| Registrar Whois Server**   |
| Registrar URL**  |
| Updated Date**   |
| Creation Date**  |
| Registry Expiry Date**   |
| Registrar Registration Expiration Date**   |
| Registrar**  |
| Registrar IANA ID**  |
| Registrar Abuse Contact Email**  |
| Registrar Abuse Contact Phone**  |
| Reseller**   |
| Domain Status**  |
| Registry Registrant ID**   |
| Registrant Fields:   |
| · Name   |
| · Organization (optional)  |
| · Street   |
| · City   |
| · State/province   |
| · Postal code  |
| · Country  |
| · Phone  |
| · Phone ext (optional)   |
| · Fax (optional)   |
| · Fax ext (optional)   |
| · Email  |
| Tech ID (optional)   |
| Tech Fields:   |
| • Name (optional)  |
| • Phone (optional)   |
| • Email (optional)   |
| Name Server  |
| DNSSEC (optional)  |
| Name Server IP Address**   |

**Last Update of Whois Database\*\***

Additional optional 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]

For further details, see [complete data elements matrix](#).

**EPDP Team Preliminary Rec #6.**

1. The EPDP Team recommends that ICANN Org enter into legally-compliant data processing agreements with the data escrow providers.
2. 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 that analyze the purpose to provide mechanisms for safeguarding Registered Name Holders' Registration Data.
3. The data elements workbook that analyzes the purpose to provide mechanisms for safeguarding Registered Name Holders' Registration Data contains the specifically-identified data elements the EPDP Team recommends be transferred by Registries and Registrars to data escrow providers (see Annex D). These data elements are:

| <b>Data Elements (Collected and Generated)</b>  |
|---|
| <b><i>Note: Data Elements indicated with ** are generated either by the Registrar or the Registry</i></b> |
| Domain Name**   |
| Registry Domain ID**  |
| Registrar Whois Server**  |
| Registrar URL**   |
| Updated Date**  |
| Creation Date**   |
| Registry Expiry Date**  |
| Registrar Registration Expiration Date**  |
| Registrar**   |
| Registrar IANA ID**   |
| Registrar Abuse Contact Email**   |
| Registrar Abuse Contact Phone**   |
| Reseller**  |
| Domain Status**   |
| Registry Registrant ID**  |

|   |
|---|
| Registrant Fields:  |
| · Name  |
| · Organization (optional)   |
| · Street  |
| · City  |
| · State/province  |
| · Postal code   |
| · Country   |
| · Phone   |
| · Phone ext (optional)  |
| · Fax (optional)  |
| · Fax ext (optional)  |
| · Email   |
| Tech ID (optional)  |
| Tech Fields:  |
| • Name (optional)   |
| • Phone (optional)  |
| • Email (optional)  |
| Name Server   |
| DNSSEC (optional)   |
| Name Server IP Address**  |
| Last Update of Whois Database**   |
| Additional optional 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] |

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

**EPDP Team Preliminary Rec #7.**

1. The EPDP Team recommends that updates are made to the contractual requirements for registries and registrars to transfer to ICANN Compliance the domain name registration data that they process when required/requested, consistent with the data elements workbook that analyzes 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 D).

2. The data elements workbook that analyzes the purpose to handle contractual compliance monitoring requests, audits, and complaints submitted by Registry Operators, Registrars, Registered Name Holders, and other Internet users contains the specifically-identified data elements the EPDP Team recommends be transferred from registries and registrars to ICANN Compliance (see Annex D). These data elements are:

| <b>Data Elements (Collected and Generated)</b>  |
|---|
| <b><i>Note: Data Elements indicated with ** are generated either by the Registrar or the Registry</i></b> |
| Domain Name**   |
| Registry Domain ID**  |
| Registrar Whois Server**  |
| Registrar URL**   |
| Updated Date**  |
| Creation Date**   |
| Registry Expiry Date**  |
| Registrar Registration Expiration Date**  |
| Registrar**   |
| Registrar IANA ID**   |
| Registrar Abuse Contact Email**   |
| Registrar Abuse Contact Phone**   |
| Reseller**  |
| Domain Status**   |
| Registry Registrant ID**  |
| Registrant Fields:  |
| · Name  |
| · Organization (optional)   |
| · Street  |
| · City  |
| · State/province  |
| · Postal code   |
| · Country   |
| · Phone   |
| · Phone ext (optional)  |
| · Fax (optional)  |
| · Fax ext (optional)  |
| · Email   |
| Tech ID (optional)  |

|  |
|--|
| Tech Fields:   |
| <ul style="list-style-type: none"> <li>• Name (optional)</li> </ul>  |
| <ul style="list-style-type: none"> <li>• Phone (optional)</li> </ul>   |
| <ul style="list-style-type: none"> <li>• Email (optional)</li> </ul>   |
| Name Server  |
| DNSSEC (optional)  |
| Name Server IP Address**   |
| Last Update of Whois Database**  |
| Additional optional 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] <sup>6</sup> |

**Question #4 for community input: Are there other data elements that are required to be transferred between registrars and registries / ICANN Compliance that are necessary to achieve the purposes identified? If so, please identify those data elements and provide the relevant rationale, keeping in mind compliance with the GDPR. Are there identified data elements that are not required to be transferred between registrars and registries / ICANN Compliance and are not necessary to achieve the purposes identified? If so, please identify those data elements and explain.**

**EPDP Team Preliminary Rec #8.**

The EPDP Team recommends that redaction<sup>7</sup> must be applied as follows to the data elements that are collected. Data elements neither redacted nor anonymized 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       |

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<sup>6</sup> These data elements are usually requested by and transferred to ICANN Compliance if the relevant data elements are processed in connection with registration policy eligibility criteria adopted by the Registry Operator to meet its obligations under Specifications 11, 12, or 13 of the Registry Agreement.

<sup>7</sup> The IPC and BC representatives on the EPDP are of the view that there should be no redactions of any data elements for legal entities.

| Data Element                           | Redacted            |
|--|---------------------|
| 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.)                  | Yes/No <sup>8</sup> |
| • Street                               | Yes                 |
| • City                                 | Yes <sup>9</sup>    |
| • State/province                       | No                  |
| • Postal code                          | Yes                 |
| • Country                              | No                  |
| • Phone                                | Yes                 |
| • Email                                | Yes <sup>10</sup>   |
| • Anonymized email / link to web form  | No                  |
| Tech Fields                            |                     |
| • Name                                 | Yes                 |
| • Phone                                | Yes                 |
| • Email                                | Yes <sup>11</sup>   |
| • Anonymized email / link to web form  | No                  |
| Name Server(s)                         | No                  |
| DNSSEC                                 | No                  |
| Name Server IP Address                 | No                  |
| Last Update of Whois Database          | No                  |

<sup>8</sup> To be decided following review of public comment.

<sup>9</sup> The IPC and BC representatives on the EPDP Team are of the view that this data element should be unredacted.

<sup>10</sup> The EPDP Team recommends that the 17 May 2018 Temp Spec requirement 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, continue to be in effect.

<sup>11</sup> The EPDP Team recommends that the 17 May 2018 Temp Spec requirement 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, continue to be in effect.

**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 between third parties and the registrant, the EPDP Team recommends that current requirements in the Temporary Specification that 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<sup>12</sup>.

**Question #5 for community input: Should the EPDP Team consider any changes in the redaction of data elements? If so, please identify those changes and provide the relevant rationale, keeping in mind compliance with the GDPR.**

**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”).<sup>13</sup>

**Question #6 for community input: Should the EPDP Team consider any changes to the recommended data retention periods? If so, please identify those changes and provide the relevant rationale, keeping in mind compliance with the GDPR. Do you believe the justification for retaining data beyond the term of the domain name registration is sufficient? Why or why not? Please provide a rationale for your answer.**

**Question #7 for community input:**

**What other factors should the EPDP Team consider about whether Contracted Parties should be permitted or required to differentiate between registrants on a geographic basis? Between natural and legal persons?**

**Are there any other risks associated with differentiation of registrant status (as natural or legal person) or geographic location? If so, please identify those factors and/or risks and how they would affect possible recommendations, keeping in mind compliance with the GDPR.**

<sup>12</sup> Members of the IPC, BC, and ALAC do not support this preliminary recommendation for reasons stated in the applicable section of this Initial Report.

<sup>13</sup> 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. See Annex D for further details.

**Should the community explore whether procedures would be feasible to accurately distinguish on a global scale whether registrants/contracted parties fall within jurisdiction of the GDPR or other data protection laws? Can the community point to existing examples of where such a differentiation is already made and could it apply at a global scale for purposes of registration data?**

**EPDP Team Preliminary Rec #12.**

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 #8 for community input: Should the EPDP Team consider any changes to its recommendations in relation to “reasonable access”? If so, please identify the proposed changes and please provide the relevant rationale, keeping in mind compliance with the GDPR.**

**EPDP Team Preliminary Rec #13.**

Based on the information and the deliberations the EPDP Team had on this topic and pending further input and legal advice, the EPDP Team recommends that ICANN Org negotiates and enters into a Joint Controller Agreement (JCA) with the Contracted Parties.

In addition to the legally required components of such agreement, the JCA shall specify the responsibilities of the respective parties for the processing activities as described below. Indemnification clauses shall ensure that the risk for certain data processing is



borne by either one or multiple parties that have the primary interest in the processing.<sup>14</sup>

**EPDP Team Preliminary Rec #14.**

The EPDP Team recommends that the policy includes the following data processing activities as well as responsible parties:

| <b>ICANN PURPOSE<sup>15</sup>:</b>   |                                   |  |
|--|-----------------------------------|--|
| As subject to Registry and Registrar terms, conditions and policies, and ICANN Consensus Policies:   |                                   |  |
| <ul style="list-style-type: none"> <li>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</li> <li>To activate a registered name and allocate it to a Registered Name Holder.</li> </ul> |                                   |  |
| <b>Processing Activity</b>   | <b>Responsible Party:</b>         | <b>Lawful Basis:</b>   |
| <b>Collection</b>  | ICANN<br>Registrars<br>Registries | 6(1)(b) for Registrars<br>6(1)(f) for ICANN and Registries <sup>16</sup>   |
| <b>Transmission from Rr to Ry</b>  | Registrars<br>Registries          | Certain data elements (domain name and nameservers) would be required to be disclosed. The lawful basis would be 6(1)b, should personal data be involved, for Registrars and 6(1)(f) of the GDPR for Registries.<br><br>For other data elements, Art. 6(1)(f) of the GDPR. <sup>17</sup> |
| <b>Disclosure</b>  | Registrars<br>Registries          | Certain data elements (domain name and   |

<sup>14</sup> ICANN Org raised a number of implementation related questions (see <https://mm.icann.org/pipermail/gnso-epdp-team/2018-November/000961.html>) that the EPDP Team will further consider as it prepares its Final Report.

<sup>15</sup> The term ICANN Purpose is used to describe purposes for processing personal data that should be governed by ICANN Org via a Consensus Policy. Note there are additional purposes for processing personal data, which the contracted parties might pursue, but these are outside of what ICANN and its community should develop policy on or contractually enforce. It does not necessarily mean that such purpose is solely pursued by ICANN Org.

<sup>16</sup> 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.

<sup>17</sup> Idem

|                       |       |   |
|-----------------------|-------|---|
|                       |       | 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 Registrars and 6 (1)(f) of the GDPR for Registries. |
| <b>Data Retention</b> | ICANN | 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 the other purposes identified herein.

| <u>Processing Activity</u>        | <u>Responsible Party:</u>         | <u>Lawful Basis:</u> |
|-----------------------------------|-----------------------------------|----------------------|
| <b>Collection</b>                 | ICANN<br>Registrars<br>Registries | 6(1)(f)              |
| <b>Transmission from Rr to Ry</b> | N/A                               | N/A                  |
| <b>Disclosure</b>                 | ICANN                             | 6(1)(f)              |
| <b>Data Retention</b>             | ICANN                             | TBD                  |

**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

| <u>Processing Activity</u>        | <u>Responsible Party:</u> | <u>Lawful Basis:</u>                             |
|-----------------------------------|---------------------------|--|
| <b>Collection</b>                 | Registrar<br>Registries   | 6(1)(b) for Registrars<br>6(1)(f) for Registries |
| <b>Transmission from Rr to Ry</b> | ICANN<br>Registries       | 6(1)(f)  |
| <b>Disclosure</b>                 | TBD                       |  |
| <b>Data Retention</b>             | ICANN                     | N/A  |

**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

| <u>Processing Activity</u> | <u>Responsible Party:</u> | <u>Lawful Basis</u>   |
|----------------------------|---------------------------|-----------------------|
| Collection                 | ICANN                     | 6(1)(f) <sup>18</sup> |
| Transmission from Rr to Ry | ICANN                     | 6(1)(f)               |
| Disclosure                 | ICANN                     | 6(1)(f)               |
| Data Retention             | ICANN                     | 6(1)(f)               |

**ICANN PURPOSE:**

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

| <u>Processing Activity</u> | <u>Responsible Party:</u> | <u>Lawful Basis:</u>  |
|----------------------------|---------------------------|-----------------------|
| Collection                 | ICANN                     | 6(1)(f) <sup>19</sup> |
| Transmission from Rr to Ry | ICANN                     | 6(1)(f)               |
| Disclosure                 | N/A                       |                       |
| Data Retention             | ICANN                     | 6(1)(f)               |

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<sup>18</sup> 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.

<sup>19</sup> 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.

**ICANN PURPOSE:**

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, RRDRP and future-developed domain name registration-related dispute procedures for which it is established that the processing of personal data is necessary.

| <b>Processing Activity</b>                          | <b>Responsible Party:</b>   | <b>Lawful Basis:</b>                                       |
|---|---|--|
| <b>Collection</b>                                   | ICANN<br>Registrars   | 6(1)(b) for Registrars<br>6(1)(f) for Registries           |
| <b>Transmission from Rr to Ry</b>                   | ICANN<br>Registries<br>Registrars   | 6(1)(b) for Registrars<br>6(1)(f) for Registries           |
| <b>Transmission to dispute resolution providers</b> | ICANN<br>Registries<br>Registrars Dispute Resolution Provider – Processor or independent controller | 6(1)(b) for Registrars<br>6(1)(f) for Registries and ICANN |
| <b>Disclosure</b>                                   |   |  |
| <b>Data Retention</b>                               |   |  |

**ICANN PURPOSE:**

Enabling validation to confirm that Registered Name Holder meets optional gTLD registration policy eligibility criteria voluntarily adopted by Registry Operator.

| <b>Processing Activity</b>   | <b>Responsible Party:</b> | <b>Lawful basis:</b>                             |
|--|---------------------------|--|
| <b>Collecting specific data for Registry Agreement-mandated eligibility requirements</b> | Registries                | 6(1)(b) for Registrars<br>6(1)(f) for Registries |
| <b>Collecting specific data for Registry Operator-adopted eligibility requirements</b>   | Registries                | 6(1)(b) for Registrars<br>6(1)(f) for Registries |

|   |            |  |
|---|------------|--|
| <b>Transmission from Rr to Ry RA-mandated eligibility requirements</b>      | Registries | 6(1)(b) for Registrars<br>6(1)(f) for Registries |
| <b>Transmission from Rr to Ry Registry-adopted eligibility requirements</b> | Registries | 6(1)(b) for Registrars<br>6(1)(f) for Registries |
| <b>Disclosure</b>   | Registries | N/A  |
| <b>Data Retention</b>   | Registries | 6(1)(f)  |

**Question #9 for community input: Should the EPDP Team consider any changes to the responsibility designations and/or identified lawful bases? If so, please identify the proposed change(s) and provide the relevant rationale, keeping in mind compliance with the GDPR.**

**EPDP Team Preliminary Rec #15.**

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 #16.**

The EPDP Team also 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 #17.**

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 #18.**

The EPDP Team recommends that ICANN Org must 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 to have publicly-available decisions.

**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.**

**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 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 #20.**

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

**EPDP Team Preliminary Rec #21.**

The EPDP Team recommends that ICANN Org enters into required data protection agreements such as a Data Processing Agreement (GDPR Art. 28) or Joint Controller Agreement (Art. 26), as appropriate, with the non-Contracted Party entities involved in registration data processing such as 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 #22.**

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](#)

## 2.1 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.

## 2.2 Other Relevant Sections of this Report

For a complete review of the issues and relevant interactions of this EPDP Team, the following sections are included within this report:

- 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 and;
- Documentation on the solicitation of community input through formal SO/AC and SG/C channels, including responses.