

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

21 Nov 2018

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

On 17 May 2018, the ICANN Board of Directors (ICANN Board) adopted the [Temporary Specification for generic top-level domain \(gTLD\) Registration Data](#)¹ (“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”)². 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

¹ 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.

² 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.³ 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;

³ 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.

For further context, please click [here](#).

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.⁴

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 collected⁵ (or automatically generated):

Data Elements (Collected and Generated)
<i>Note: Data Elements indicated with ** are generated either by the Registrar or the Registry</i>
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

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

· 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](#).

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.

For further context, please click [here](#).

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:

Data Elements (Collected and Generated)
<i>Note: Data Elements indicated with ** are generated either by the Registrar or the Registry</i>
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)

<ul style="list-style-type: none"> • Phone (optional)
<ul style="list-style-type: none"> • 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:

Data Elements (Collected and Generated)
Note: Data Elements indicated with ** are generated either by the Registrar or the Registry
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.

For further context, please see [here](#) and [here](#).

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:

Data Elements (Collected and Generated)
<i>Note: Data Elements indicated with ** are generated either by the Registrar or the Registry</i>
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] ⁶

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.

For further context, please see [here](#).

EPDP Team Preliminary Rec #8.

The EPDP Team recommends that redaction⁷ 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:

⁶ 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.

⁷ 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
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.)	Yes/No ⁸
• Street	Yes
• City	Yes ⁹
• State/province	No
• Postal code	Yes
• Country	No
• Phone	Yes
• Email	Yes ¹⁰
• Anonymized email / link to web form	No
Tech Fields	
• Name	Yes
• Phone	Yes
• Email	Yes ¹¹

⁸ To be decided following review of public comment.

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

¹⁰ 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.

¹¹ 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.

Data Element	Redacted
<ul style="list-style-type: none"> Anonymized email / link to web form 	No
Name Server(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 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 place¹².

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.

For further context, please click [here](#).

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”).¹³

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.

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

¹³ 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.

For further context, please click [here](#).

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.

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?

For further context, please click [here](#).

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]* timeliness 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.

For further context, please click [here](#).

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.¹⁴

EPDP Team Preliminary Rec #14.

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

ICANN PURPOSE¹⁵:		
As subject to Registry and Registrar terms, conditions and policies, and ICANN Consensus Policies:		
<ul style="list-style-type: none"> • 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 Registrars	6(1)(b) for Registrars

¹⁴ 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.

¹⁵ 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.

Transmission from Rr to Ry	Registries	6(1)(f) for ICANN and Registries ¹⁶
	Registrars 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. For other data elements, Art. 6(1)(f) of the GDPR. ¹⁷
Disclosure	Registrars Registries	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 Registrars and 6 (1)(f) of the GDPR for Registries.
Data Retention	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.

Processing Activity	Responsible Party:	Lawful Basis:
Collection	ICANN Registrars Registries	6(1)(f)

¹⁶ 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.

¹⁷ Idem

Transmission from Rr to Ry	N/A	N/A
Disclosure	ICANN	6(1)(f)
Data Retention	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

Processing Activity	Responsible Party:	Lawful Basis:
Collection	Registrar Registries	6(1)(b) for Registrars 6(1)(f) for Registries
Transmission from Rr to Ry	ICANN Registries	6(1)(f)
Disclosure	TBD	
Data Retention	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

Processing Activity	Responsible Party:	Lawful Basis
Collection	ICANN	6(1)(f) ¹⁸
Transmission from Rr to Ry	ICANN	6(1)(f)
Disclosure	ICANN	6(1)(f)
Data Retention	ICANN	6(1)(f)

¹⁸ 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.

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

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.

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

¹⁹ 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:		
Enabling validation to confirm that Registered Name Holder meets optional gTLD registration policy eligibility criteria voluntarily adopted by Registry Operator.		
Processing Activity	Responsible Party:	Lawful basis:
Collecting specific data for Registry Agreement-mandated eligibility requirements	Registries	6(1)(b) for Registrars 6(1)(f) for Registries
Collecting specific data for Registry Operator-adopted eligibility requirements	Registries	6(1)(b) for Registrars 6(1)(f) for Registries
Transmission from Rr to Ry RA-mandated eligibility requirements	Registries	6(1)(b) for Registrars 6(1)(f) for Registries
Transmission from Rr to Ry Registry-adopted eligibility requirements	Registries	6(1)(b) for Registrars 6(1)(f) for Registries
Disclosure	Registries	N/A
Data Retention	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.

For further context, please click [here](#).

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.

For further context, please click [here](#).

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.

For further context, please click [here](#).

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.

3 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.

3.1 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 two or more times 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 including 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.

3.2 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>.

3.3 Discussion Summary Indexes

The Triage Report caused the development of the Discussion Summary Indexes. 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 Discussion Summary Indexes to allow for a focused and systematic approach in the deliberations; the Discussion Summary Indexes 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 Discussion Summary Indexes can be found here:

<https://community.icann.org/x/ExxpBQ>.

3.4 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 D of this Initial Report.

3.5 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. The small teams covered three topics:

1. Legal and natural persons:
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?
Is there a legal basis for Contracted Parties to treat legal and natural persons differently?
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).
2. Geographic basis:
Should Registry Operators and Registrars (“Contracted Parties”) be permitted or required to differentiate between registrants on a geographic basis?
3. Temporary Specification and Reasonable Access
Should existing requirements in the Temporary Specification remain in place until a model for access is finalized?

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.

3.6 Mediation Techniques

In this work, the use of professional mediation techniques were also employed as a way to facilitate the informal 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.

3.7 Charter Questions

In addressing the charter questions, the EPDP Team considered both (1) the input provided by each group in response to the [triage surveys](#); and (2) the input provided by each group in response to the request for [Early Input](#) in relation to the specific charter questions.

4 EPDP Team Responses to 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 comment²⁰. 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 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:

²⁰ Following a review of public comments, the EPDP Team will take a formal consensus call before producing its Final Report.

“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.”²¹

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.”²²

- 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.
- Note that 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.
- ALAC, BC, and IPC proposed to consider a Purpose for Processing Registration Data to address the needs and benefits provided by DNS security and stability research through publication of reports on threats to the operational stability, reliability, security, global interoperability, resilience, and openness of the DNS. The EPDP Team did not have sufficient time to discuss this proposed Purpose

²¹ See <https://www.icann.org/en/system/files/correspondence/jelinek-to-marby-05jul18-en.pdf>

²² See https://edpb.europa.eu/news/news/2018/european-data-protection-board-endorsed-statement-wp29-icannwhois_en

before publication of the Initial Report. The EPDP Team seeks community and ICANN Org input on whether the Purposes agreed upon by the EPDP Team, such as Purpose 2, already encompass this proposed purpose and, if not, whether this proposed purpose should be added (if so, provide a rationale for doing so, keeping in mind compliance with GDPR).

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 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;
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.²³

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?

²³ 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 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 from the European Data Protection Board related 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. admin@company.com). For the avoidance of doubt, the EDPB recommends explicitly clarifying this within future updates of the Temporary Specification²⁴”.

- The EPDP Team also took note of a related footnote which states, “[if contact details for persons other than the RNH are provided] it should be ensured that the individual concerned is informed”. The EPDP Team discussed whether this note implies that it is sufficient for the Registered Name Holder (RNH) to inform the individual it has designated as the technical contact, or whether the registrar may have the additional legal obligations to obtain consent. The EPDP Team agreed to request further clarification from the EDPB on this point.
- Noting some of the possible legal and technical challenges involved in collecting data from a third party, some (RySG, RrSG, NCSG) expressed the view that registrars should have the option, but should not be contractually required, to offer the RNH the ability to provide additional contact fields, e.g., technical function. Others (BC, IPC, ALAC, GAC) expressed the view that registrars should be required to offer the RNH this ability, as making this optional could ultimately lead to risks to DNS stability, security and resiliency. The stakeholders supporting this view noted this functionality is considered important and desirable for some RNHs.

²⁴ See <https://www.icann.org/en/system/files/correspondence/jelinek-to-marby-05jul18-en.pdf>

- 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 D 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 (e.g., deliver the service of fulfilling a domain name registration).

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 collected²⁵ (or automatically generated):

Data Elements (Collected and Generated)
<i>Note: Data Elements indicated with ** are generated either by the Registrar or the Registry</i>
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:

²⁵ For those data elements marked as “(optional)”, these are optional for the RNH to provide. (Note, the EPDP Team is still considering whether optional also means optional for the registrar to offer the ability to the RNH to provide these data elements, or whether it would be required for the registrar to offer this ability).

· 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](#).

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.

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:

- 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 in response to charter question a) as well as the identified corresponding lawful basis – see the data elements workbooks in Annex D 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.

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:

Data Elements (Collected and Generated)
<i>Note: Data Elements indicated with ** are generated either by the Registrar or the Registry</i>
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](#).

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 and/or transferred from registrar to registry should be considered for escrow as those elements have been identified as necessary to meet the purpose.

EPDP Team Preliminary Rec #6.

4. The EPDP Team recommends that ICANN Org enter into legally-compliant data processing agreements with the data escrow providers.
5. 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.
6. 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:

Data Elements (Collected and Generated)
<i>Note: Data Elements indicated with ** are generated either by the Registrar or the Registry</i>
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 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

- 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 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 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:

Data Elements (Collected and Generated)
<i>Note: Data Elements indicated with ** are generated either by the Registrar or the Registry</i>
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] ²⁶

²⁶ 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.

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.

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 discussed 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 of the Temporary Specification). Although many agreed with the treatment (redaction vs. publication) of data-elements under the Temporary Specification, there was some disagreement as to whether the following elements should be treated differently, to either be redacted (as some believe they could contain personally identifiable information) or, in the alternative published, as described in greater detail below:
 - Organization,
 - City, and
 - Email Address.
- In the context of the Organization field, the EPDP Team noted there is currently a lack of consistency in relation to how this field is used by the Registered Name Holder, so there may be instances where it contains either personally identifiable information or information that could identify a protected person or entity.
- Similarly, the EPDP Team observed that this data field, when published in combination with other information, might reveal personally identifiable information, which could result in harm to the impacted individual or entity.²⁷ As such, the NCSG, ISPCP, RrSG and RySG support redacting this information. It was

²⁷ See Recital 26 of the GDPR as well as <https://gnso.icann.org/en/drafts/wsgr-icann-memorandum-25sep17-en.pdf> - response to question 3.

- also pointed out that the organization field is commonly used to indicate that the registrant is a legal entity. Whilst this field is sometimes filled out incorrectly, this is predominantly a data quality issue. Incorrect publication of an individual's personal data - and associated legal risk to a contracted party - may be mitigated through user education, and post hoc by correction under the data subject's rights of rectification, erasure and restriction of processing (Arts. 16-18). However the NCSG notes that this process of rectification is imperfect, because once a breach of personal information has occurred, the data is out there and may have been harvested by an entity that is unresponsive to the legitimate requests of the data subject. In the meantime, and perhaps indefinitely, this exposes the impacted individual or entity to the real possibility of harm. While some stakeholders have compared domain name registration data to land ownership records, the NCSG believes this to be a false premise, because land ownership records do not typically result in threats to life and liberty -- exercising free speech sometimes does. SSAC representatives noted that this legal risk is balanced against the systemic risk of uniform redaction. SSAC representatives noted that the organization field provides the DNS ecosystem with a common signal about a domain owner, with implicitly different status to a natural person. Without this signal (interpreted directly or by third parties) it is the view of some that users are more likely to fall victim to scams, fraud, identity theft and extortion; these can themselves constitute severe breaches of privacy. Some asserted that in aggregate they cause a systemic risk which does not fall squarely on one party, but instead can damage trust in the whole DNS.
- Assuming that the intended content for this field is to denote a legal person, the EPDP Team intends to seek clarification about the potential liability should a Registered Name Holder provide personally identifiable information within the Organization field and that field is published in a freely accessible directory. Such a request would include 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 Preliminary Recommendation #8 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. Specifically, the IPC and BC believe the City data element is critical information in determining venue for legal proceedings and contacting local law enforcement, and thus should remain unreacted. The EPDP Team also observed that this data field, when published in combination with other information, might reveal personally identifiable information.
 - IPC, BC, GAC, and ALAC also noted that registrars need not redact these data if they are able to determine that the registrant is a legal person.
 - In the context of email address, the EPDP Team considered existing requirements in the Temporary Specification that:
-

The 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.

Comments to this requirement were:

- Members of the IPC pointed out that an anonymized email address as well as a web form prevent identifying trends across multiple registrations as well as possible confirmation / certainty that communication has been relayed.
- Registrars pointed out that the aim of the web form is to contact the registrant. If registrars are required by law, court order or some other judicial process to provide the information, then registrars would ordinarily do so.
- BC, IPC, and ALAC members noted that this requirement should not be applied in the case of legal persons, as long as EDPB guidance is followed and no personal data included in the email address. In response, others pointed to the potential challenges and risks of that approach (see also section on natural / legal persons).

EPDP Team Preliminary Rec #8.

The EPDP Team recommends that redaction²⁸ 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
Registrar Registration Expiration Date	No
Registrar	No
Registrar IANA ID	No
Registrar Abuse Contact Email	No
Registrar Abuse Contact Phone	No

²⁸ 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
Reseller	No
Domain Status	No
Registrant Fields	
• Name	Yes
• Organization (opt.)	Yes/No ²⁹
• Street	Yes
• City	Yes ³⁰
• State/province	No
• Postal code	Yes
• Country	No
• Phone	Yes
• Email	Yes ³¹
• Anonymized email / link to web form	No
Tech Fields	
• Name	Yes
• Phone	Yes
• Email	Yes ³²
• Anonymized email / link to web form	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.

²⁹ To be decided following review of public comment.

³⁰ The IPC and BC representatives on the EPDP Team are of the view that this data element should be unredacted.

³¹ 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.

³² 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.

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 place³³.

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.

Charter Question

g) Data retention:

- 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

- 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”³⁴.

³³ Members of the IPC, BC, and ALAC do not support this preliminary recommendation for reasons stated earlier in this section.

³⁴ See <https://www.icann.org/en/system/files/correspondence/jelinek-to-marby-05jul18-en.pdf>

- For each of the purposes, the EPDP Team has identified in the data elements workbooks in Annex D 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”).³⁵

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.

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

- In relation to charter 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 members have divergent views on whether differentiation on a geographic basis should be *required*. Specifically, members of the BC and IPC have expressed the view that contracted parties should be *required* to differentiate between registrants on a geographic basis.

³⁵ 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.

The Members expressing support for requiring differentiation between registrants on a geographic basis (BC, IPC) noted the following:

1. GDPR should not be over-applied, i.e., not applied to personally identifiable information not falling under EEA jurisdiction.
2. The global nature of DNS data and the application and fulfillment of the Purposes, as stated herein, necessitate the application of the laws as they exist within each relevant jurisdiction.
3. Applying GDPR to all registrants would undermine the ability of sovereign states to enforce their own laws and regulations within their respective jurisdictions.
4. Businesses, including contracted parties, presumably 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 (Contracted Parties, NCSG) noted the following:

1. The actual location of the registrant is not dispositive as to whether GDPR applies due to the industry use of globally dispersed 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. GDPR requires that data subjects are 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.
3. 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.
4. 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."

5. 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.
6. RDS policies should be as unified as possible. Domain names in the same TLDs should not have different WHOIS/RDS outputs based on circumstances their registration (registrant, registrar, involved processors) but rather present the same level of detail for all registrations.
7. In answer to question h5, the NCSG highlighted how the information of legal persons might also be the personal information of a natural person, or could lead to the identifiability of a natural person. In support of this claim, the NCSG brought attention to Opinion 4/2007 of the Article 29 Data Protection Working Party, which advised that where information about a legal person or business is “considered as “relating” to a natural person, it should be viewed as personal data, and the data protection rules should apply.³⁶ The NCSG also noted that laws and regulations other than the GDPR guarantee the rights of individuals associated with entities, such as national constitutions and the Charter of Fundamental Rights of the European Union, which entitle both individuals and legal entities (such as religious groups) to protection.

In relation to charter question h2, yes, there is a legal basis for contracted parties to differentiate between 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.

Some members have suggested ICANN, in conjunction with interested community members, should explore the feasibility of a mechanism allowing geographic differentiation (such as postulated by the EWG rules engine that was proposed by ICANN’s [Expert Working Group on gTLD Directory Services \(EWG\)](#) in 2014, at pages 87-89 of the [EWG Final Report](#)). Others do not support such a request as part of the EPDP Team’s work because although the law does distinguish between EU/EEA and non-EU/EEA personal data, any proposed policy recommendations must be feasible and implementable. The EWG did note in its [final report](#) that the feasibility of a rules engine would need to be tested technically. Furthermore, the EWG noted that legally, “there are a number of open questions, especially regarding the definition, legal acceptance, and implementation of such a system”. 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 the view of some.

³⁶ https://ec.europa.eu/justice/article-29/documentation/opinion-recommendation/files/2007/wp136_en.pdf

In relation to questions h3, h4 and h5, the EPDP Team discussed these questions extensively; specifically, how to reach consensus on a policy recommendation with the goal of preventing unlawful disclosure or publication of personal data that concerns natural persons. In these discussions, the EPDP Team also considered the EDPB Advice in relation to this topic:

“The GDPR does not apply to the processing of personal data which concerns legal persons and in particular undertakings established as legal persons, including the name and the form of the legal person and the contact details of the legal person. While the contact details of a legal person are outside the scope of the GDPR, the contact details concerning natural persons are within the scope of the GDPR, as well as any other information relating to an identified or identifiable natural person.³⁷”

The mere fact that a registrant is a legal person does not necessarily justify unlimited publication of personal data relating to natural persons who work for or represent that organization, such as natural persons who manage administrative or technical issues on behalf of the registrant.

For example, the publication of the personal email address of a technical contact person consisting of can reveal information regarding their current employer as well as their role within the organization. Together with the address of the registrant, it may also reveal information about his or her place of work.

In light of these considerations, the EDPB considers that personal data identifying individual employees (or third parties) acting on behalf of the registrant should not be made publically, available by default in the context of WHOIS. If the registrant provides (or the registrar ensures) generic contact email information (e.g. admin@domain.com), the EDPB does not consider that the publication of such data in the context of WHOIS would be unlawful as such.”

In answer to question “h3,”

- the EPDP Team agrees that Contracted Parties should be allowed to treat personal data that concerns legal and natural persons differently.
- the EPDP Team did not agree on whether treating personal data that concerns legal and natural persons differently should be required
- the EPDP team did not agree what further steps could or should be undertaken to determine whether consensus could be obtained for this part of the question.

In answer to question “h4,” the EPDP Team agrees that, under GDPR, there is a legal basis to treat personal data that concerns legal and natural persons differently.

³⁷ Article 4(1) GDPR.

In answer to question “h5,” the contracted parties identified substantial legal, liability and cost risks associates with attempting to differentiate personal data that concerns legal or natural persons across multiple jurisdictions with globally dispersed data operating under different privacy regimes. See their comments below.

A small group was convened to discuss the charter questions and (among other items) whether the legal and liability risks described by contracted parties could be ameliorated to an extent so that contracted parties could undertake a distinction between personal data that concerns legal and natural persons.

As a result of the small group recommendation, the EPDP team debated whether additional research should be undertaken to inform the policy debate. The EPDP team is divided on the issue – this division is described in their comments:

- Contracted Parties, supported by the NCSG, stated that they “oppose/reject any recommendations for new contractual requirements in the EPDP Draft Initial Report, and will remain opposed to these recommendations as we move towards final recommendations”. Stated opposition to retaining the current permissive language of the Temp Spec, are, in the opinion of the CPH and NCSG, based on “refuted assertions or non-implementable options, many of which, even if they were in scope, given the state of the art, the cost of implementation, and the likely impact to the rights of the data subjects, are currently unreasonable”. The Contracted Parties and the NCSG are of the view that the already stated requirements of the Temporary Specification “remain outside the scope of the EPDP and should be a matter for another, more appropriate PDP.”
- The BC, IPC, ALAC, and GAC members of the EPDP stated that ICANN’s mission, the public interest and transparency are all better served if the legal vs. national person distinction is required. They noted that certain ccTLDs as well as gTLDs make this distinction³⁸. Therefore, the BC, IPC, ALAC and GAC are of the view that making the distinction between legal and natural persons is not only in keeping with the law, but also feasible for the Contracted Parties to implement. They further are of the view that this critical issue falls squarely within the scope of the EPDP, as it is already addressed in the Temporary Specification.

Some members of the EPDP Team identified a number of risks, including:

- The difficulty of distinguishing between the two at the point of registration could lead to the unnoticed and unintended publication of the private data of many natural persons.

³⁸ See for example, CENTR Report - <https://centr.org/library/library/survey-report/centr-report-whois-status-and-impacts-from-gdpr.html> as well as .cat and .nyc. requirements.

- While personal data that concerns legal persons doesn'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 enjoying rights and protections under GDPR. Some noted that this risk may be minimized through clear explanatory language beneath each field when filling in data fields within domain name registrations.
- There may be situations in which it can be difficult to separate the data of natural persons from that of legal persons. This can be the case, for example, if the legal person is a sole proprietorship, if the name of a person appears in the company's name, if the business address is a natural person's residence, or if an email address is assigned to a single individual ("john.doe@company.example.com" as opposed to "info@company.example.com").

In addition, the EPDP team has discussed whether risks may be somewhat mitigated through educational resources. Some in the EPDP Team expressed caution, as a stated necessity to rely on educational resources may not be considered to be compatible with the concepts of privacy by default or privacy by design i.e. where additional 'educational resources' are deemed necessary, the process itself is likely not established or presented in a sufficiently clear manner.

The EPDP Team would like to request input on the following questions in relation to this topic to help inform any further deliberations on this topic:

- Should the EPDP Team recommend that Contracted Parties be allowed or required to treat personal data that concerns legal and natural persons differently? Please provide rationale to your response.
- Are there examples from other industries or areas, e.g. ccTLDs or gTLDs, where a mechanism has been developed and implemented to distinguish between personal data that concerns natural and legal person, factoring in some of the challenges identified above?
- Should the EPDP Team decide to recommend requiring distinguishing between personal data that concerns natural and legal persons, how should implementation be carried out, especially considering legacy registrations?
- Should the EPDP Team decide to recommend that further research is undertaken, what and how should this research be carried out?
- What risks, if any, to natural persons' privacy would occur if registrars were required to try to segregate personal data that concerns legal and natural persons at the point of registration?
- What additional costs and risks to registrars and registries, if any, would occur if registrars were required to distinguish between personal data that concerns legal and natural persons at the point of registration?

- Given that the process of distinguishing between personal data that concerns legal and natural persons will likely not be perfect or costless, and that some legal persons may self-identify as natural persons and vice-versa, what would be the net benefit of requiring such a distinction?
- (For the EDPB) If registrars allow registrants to self-identify at the time as a natural or legal person, who will be held liable if the registrant incorrectly self-identifies and personal information is publicly displayed? Apart from self-identification, and educational materials to inform the registrant, are there any other ways in which risk of liability could be mitigated by registrars?

The input on these questions will help the EPDP Team further analyze if it is possible and desirable to conduct additional research in order to inform the discussion about making this distinction in the context of domain name registrations, in a manner that is commercially reasonable, implementable and does not result in unreasonable liability or cost for contracted parties.

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.

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?

- 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

- While most EBERO transition scenarios may not involve the transfer of registration data, the EPDP Team documented this processing activity in order to comprehensively account for all relevant processing activities. In reviewing processing activities associated with EBERO, the EPDP Team noted that the EBERO process invokes the registry escrow process. Specifically, Section 2.3 and

Specification 2 of the Registry Agreement refer to the Escrow Format Specification, which specifically mentions “such as domains, contacts, name servers, etc[.]” The EPDP Team concluded that no other registration data is processed under other components of the EBERO process. Thus, a separate workbook specifically for EBERO was not created because the Registry Escrow purpose (see Workbook E-Ry) documents the transfer of data within the processing activities section of the workbook.

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 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.

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

- 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 D.
- Some members of the EPDP Team considered whether the identification of Data Controllers & Processors or other recommendations in this report could have an impact on “No Third-Party Beneficiary” clauses in existing ICANN Contracted Party agreements and whether it should be made clear that this may not be the intention. The EPDP Team expects to consider this issue further.
- The EPDP Team took note of the GDPR requirements and notes that in instances where the EPDP Team has classified ICANN as a Controller, ICANN would be expected to comply with the law. However, the EPDP Team is not recommending additional requirements for ICANN at this time.
- Similarly, the EPDP Team took note of the GDPR requirements and notes that in instances where the EPDP Team has classified Registries and Registrars as Controllers, or Processors, the Registry and/or Registrar would be expected to comply with the law. However, the EPDP Team is not recommending additional requirements for contracted parties at this time.
- As noted below, the EPDP Team disagreed about the application of Art. 6(1)b, namely, does the reference ‘to which the data subject is party’ limit the use of this lawful basis to only those entities that have a 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.

Processors, Controllers, Co-Controllers and Joint Controllers

Controller is the person or entity, that alone or jointly with others, determines the purpose and means of processing. Processing, in turn is “*any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction*”.

Pursuant to Art. 4 no. (7) GDPR “controller” 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.

Art. 26 GDPR specifies the joint responsibility in terms of specifying the manner in which those jointly determining the purposes and means of processing shall be responsible (“Joint Controller”). Decision-making power concerning purpose and means of processing directly correlates to determining responsibility.

In contrast to joint controllers, processors do not have the right to make decisions with regard to the purposes and means of processing, but act for the contractor (controller) with a duty to comply with the controller(s)’ instructions.

Nonetheless, insofar as the processors, as agents acting on behalf of the controller(s), have options to select or design the purpose or means of processing, they will then be considered to be controllers jointly with the contractor and correspondingly have additional obligations.³⁹

The purpose of processing is an “expected result that is intended or guides planned actions”. The means of processing is the “type and manner in which a result or objective is achieved”⁴⁰.

Processors are distinguished from [joint] controllers based on the following criteria:

- A person or entity that has no legal or factual influence on the decision concerning the purposes for and manner in which personal data is processed cannot be a controller.

³⁹ *Klabundein Ehmann/Selmayr*, „Datenschutz-Grundverordnung“ Art.4 marg. no. 29

⁴⁰ Art. 29 Data Protection Working Party, Statement 1/2010 of 16 February 2010, p. 16, available at http://ec.europa.eu/justice/policies/privacy/docs/wpdocs/2010/wp169_de.pdf

- A person or entity that alone or jointly with others decides on the purposes of processing is always a controller.
- The controller may also delegate the decision(s) concerning the means of processing to the processor, as long as content-related decisions, e.g. concerning the legitimacy of processing, are reserved for the controller.
- Processors are independent legal persons who are different from the controller and who process data on behalf of the controller(s) without deciding on the purposes of processing.⁴¹

Where two or more different organizations jointly determine the purposes or the essential elements of the means of the processing they will be joint controllers and must enter into an agreement in the form required by Art. 26 of the GDPR. The participation of the parties to the joint determination may take different forms and does not need to be equally shared. Jointly must be interpreted “as meaning ‘together with’ or ‘not alone’ in different forms and combinations” and “the assessment of joint control should mirror the assessment of ‘single’ control”. Therefore, it cannot be assumed that ICANN and the contracted parties are co-controllers for the processing of data, rather than joint controllers. A co-controllership would require two or more parties which are completely independent of one another, co-operatively working together in the processing of data but for different purposes.

ICANN and the EPDP Charter Questions and How the Above Principles are Applied Herein

As discussed below, the processing of registration data is covered by the overarching purpose of the registration of a domain name by all three parties in this process.

Purpose of Art. 26 GDPR

The regulation is to primarily protect of the rights and freedoms of data subjects.⁴² This document is intended to address the clear allocation of responsibilities in relation to ensure the rights of data subjects. In more complex role allocations, e.g. in the area of domain registration with several distribution levels, the data subject’s right of access and other rights are to be guaranteed across levels.⁴³

“The definition of the term “processing” listed in Article 2 lit. b of the guideline does not exclude the option that diverse actors participate in diverse operations or sets of operations in connection with personal data. These operations can be executed

⁴¹ Art. 29 Data Protection Working Party, Statement 1/2010 of 16 February 2010, p. 18, 39, 40, available at http://ec.europa.eu/justice/policies/privacy/docs/wpdocs/2010/wp169_de.pdf

⁴² *Bertmannin Ehmann/Selmayr* “Datenschutz-Grundverordnung” Art. 26, marg. no. 1

⁴³ Art. 29 Data Protection Working Party, Statement 1/2010 of 16 February 2010, p. 27, available at http://ec.europa.eu/justice/policies/privacy/docs/wpdocs/2010/wp169_de.pdf

simultaneously or in diverse stages. In such a complex environment it is even more important that roles and responsibilities are allocated to ensure that the complexity of joint control does not result in an impractical division of responsibility that would affect the effectiveness of data protection law.”⁴⁴

Recital 79 GDPR furthermore clarifies that the regulation is to simplify monitoring by the supervisory authorities.

The factual control of the data processing, as well as control over external effects vis-à-vis the data subject, is determinative when reviewing responsibility.

Furthermore, processing should not be artificially divided into smaller processing steps, but can be uniformly considered as a set of operations. In this respect, data collection, passing on to the registry, review and implementation and ongoing management of the registration can be considered as one set of “domain registration” operations, because it pursues the overall purpose of registering the domain for a new registrant. This also applies if diverse agencies pursue different purposes within the processing chain, when engaged in the detail of smaller processing steps on a micro level. On a macro level, the same purpose is pursued overall with all small steps in the chain, so that a uniform set of operations specifically applies here (Art.29 Group WP 169, p. 25).

Differentiation is required when considering the operation of collecting and processing the data collected by the registrar from its customers in order to create an invoice, to maintain a customer account, and to manage the contractual relationship with its customers. This data fulfils another purpose that is not codetermined by the registry and ICANN.

Registry, registrar, and ICANN must be assessed as joint controllers for the set of operations of domain registration (Art. 4 no. (7) GDPR) as listed in the below table. Due to the factual and legal separation between registrar and registry, a domain registration can mandatorily be performed only by both entities jointly and governed by ICANN for gTLDs.

In this respect, it must be assumed that ICANN, registrars and registries jointly determine the purposes and means of processing that are compulsory for domain registration overall. In this respect, these are responsible for this set of operations pursuant to Art. 4 no. (7) and 26 GDPR.

This also corresponds to the legislative intent to have clear and simple regulations concerning responsibility in case of multiple participants and complex processing structures, and to prevent a splitting of responsibilities to protect the data subjects as far as possible.

⁴⁴ Art. 29 Data Protection Working Party, Statement 1/2010 of 16 February 2010, p. 22, available at http://ec.europa.eu/justice/policies/privacy/docs/wpdocs/2010/wp169_de.pdf

Pursuant to Article 1 Section 1.1 of the ICANN bylaws, ICANN has responsibility:

“to ensure the stable and secure operation of the Internet’s unique identifier systems as described in this Section 1.1(a) (the “Mission”). Specifically, ICANN: (i) Coordinates the allocation and assignment of names in the root zone of the Domain Name System (“DNS”) and coordinates the development and implementation of policies concerning the registration of second-level domain names in generic top-level domains (“gTLDs”). In this role, ICANN’s scope is to coordinate the development and implementation of policies:

- For which uniform or coordinated resolution is reasonably necessary to facilitate the openness, interoperability, resilience, security and/or stability of the DNS including, with respect to gTLD registrars and registries, policies in the areas described in Annex G-1 and Annex G-2;”*

As already stated, ICANN fulfils this responsibility among other things by contractually specifying for the various participants the data which must mandatorily be collected and retained. With these legitimate provisions, ICANN specifies a purpose for the processing operation overall and thus becomes joint controller in addition to registry and registrar. It should be noted that ICANN’s responsibility is unaffected by the fact that certain requirements have been decided upon by multiple stakeholders or have determined and put into effect through a community effort. Such joint discussion or drafting of certain policies or requirements does not place ICANN in a role as the entity ultimately requiring the contracted parties to act in accordance with the policies issued by ICANN.

Joint and several liability

Pursuant to the joint responsibilities of all joint controllers herein, the data subject in accordance with Art. 26 (3) GDPR, may as a general rule fully assert its claims vis-à-vis to all controllers, regardless of the contractual allocation.

Even with a clear distribution of the responsibility between the controllers, all controllers are liable vis-à-vis external parties for the overall processing operation. In this respect, Art. 82 (4) GDPR mandates joint and several liability for the data subject’s right to compensation and supplements the liability regulations of Art. 26 (3) GDPR. The factual responsibility may be adjusted only *inter partes*. Therefore, having clear allocations between the parties is even more important *inter partes*.

Fines

However, such joint and multiple liability does not apply to fines under Art. 83 (4) lit. a) GDPR. In this respect, registry and registrar are liable pursuant to their role allocation for breaches in their area or against duties under the GDPR, which were incumbent upon them within the scope of the contractual basis.

Joint Controller Agreement

Joint controllers must furthermore specify, in a transparent form, who fulfills which duties vis-à-vis the data subjects, as well as who the contact point for data subject's rights is (Art. 26 (1) p. 2 GDPR).

However, the data subject is authorized to address any of the participating responsible agencies to assert its rights, regardless of the specification concerning competence (Art. 26 (3) GDPR).

The agreement is to regulate the specific controllers that are to fulfill the duties prescribed by GDPR. Pursuant to Recital 79 GDPR, the following must be specifically regulated in a transparent form:

- how the relations and functions of the controllers among each other are designed,
- how roles are distributed between controllers to fulfill data subject rights of registrants,
- through which controller a respective supervisory authority oversees, provides guidance and executes supervisory, monitoring measures and/or claims and fine assessments.

All controllers must fulfill information obligations independently from each other. However, Art. 26 GDPR suggests that multiple controllers fulfill information obligations centrally. Details shall be agreed upon between the parties.

Therefore, in relation to the above, as described, the EPDP, has set forth within the Initial Report, the Responsibility of each named party in relation to the specified Purposes, listed and based on the legal basis recommendations, for the respective Purpose and in relation to its duties performed for the data subject.

Needed contractual changes to the RAA or the obligations owed to or by the Registrars and Registries and ICANN hereunder will need to be supplemented and put into place accordingly.

In relation to Preliminary Recommendation #13 below, the EPDP Team understands that a joint controller situation between ICANN Org, Registries and Registrars requires work at a greater level of granularity than in this report. During the further work of the EPDP and negotiations that will subsequently take place between the Registries, Registrars and ICANN in relation to memorializing this relationship when entering into a Joint Controller Agreement (JCA), the parties shall conduct a detailed review of the individual processing activities and the actions to be taken by the respective parties. Note that Art. 26 sec 2 of the GDPR specifies:

"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."

Based on this, two documents will need to be prepared, one which is published and outlines the roles and responsibility and one private document containing more and potentially confidential information on the collaboration of the joint controllers.

A clear demarcation the processing activities covered by the JCA versus those carried out by either party outside the scope of the JCA shall be documented and reflected both in the private as well as in the public version of the JCA.

The JCA shall ensure that the risks of data processing are shared adequately based on whose interests are concerned. Also, the JCA shall include indemnifications to ensure that no party shall ultimately be liable for another parties' wrongdoing.

The JCA shall recognize that parties are currently using third parties' services or otherwise work with third parties, such as

- Data Escrow Agents
- EBEROs
- Registry Service Providers
- Registrar as a Service Providers
- Resellers
- Dispute Resolution Providers
- the TMCH.

This may or may not include processing of personal data by those third parties. Where personal data is processed by third parties, the respective joint controller will need to ensure that the data processing is carried out in a way compliant with GDPR. However, conditional to GDPR compliance, nothing in the JCA shall prevent the respective joint controller from engaging third parties and entering into the required agreements without further authorizations from the other joint controllers.

The EPDP Team considers it out of scope of its work to prepare a JCA or even to prescribe in what form JCAs will be entered into, as long as a set of the minimum requirements as specified in the EPDP Team's report, are met. It does appear advisable, though, to create one template, which can be amended to reflect situations that are not applicable industry-wide (such as eligibility requirements for registered name holders) and that JCAs are entered into per TLD between ICANN Org, the respective Registry Operator and registrars. A potential way to facilitate contracting would be to make the JCA part of the RRA, so there would be separate tri-partite agreements between ICANN Org, the Registry Operator and each registrar. While ICANN is not a party to the RRA, but ICANN could authorize the registries to enter into JCAs with all registrars on its behalf.

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.⁴⁵

EPDP Team Preliminary Rec #14.

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

ICANN PURPOSE⁴⁶:
 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 Party⁴⁷:	Lawful Basis:
Collection	ICANN Registrars Registries	6(1)(b) for Registrars 6(1)(f) for ICANN and Registries ⁴⁸
Transmission from Rr to Ry	Registrars Registries	Certain data elements (domain name and nameservers) would be

⁴⁵ 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.

⁴⁶ 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.

⁴⁷ Note, the responsible party is not necessarily the party carrying out the processing activity. This applies to all references of ‘responsible party’ in these tables.

⁴⁸ 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.

Disclosure		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. For other data elements, Art. 6(1)(f) of the GDPR. ⁴⁹
	Registrars Registries	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 Registrars and 6 (1)(f) of the GDPR for Registries. 6(1)(f)
Data Retention	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.

Processing Activity	Responsible Party:	Lawful Basis:
Collection	ICANN Registrars Registries	6(1)(f)
Transmission from Rr to Ry	N/A	N/A
Disclosure	ICANN	6(1)(f)
Data Retention	ICANN	N/A

⁴⁹ Idem

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>
Collection	Registrar Registries	6(1)(b) for Registrars 6(1)(f) for Registries
Transmission from Rr to Ry	ICANN Registries	6(1)(f)
Disclosure	TBD	
Data Retention	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) ⁵⁰
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>

⁵⁰ 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.

Collection	ICANN	6(1)(f) ⁵¹
Transmission from Rr to Ry	ICANN	6(1)(f)
Disclosure	N/A	
Data Retention	ICANN	6(1)(f)

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

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

ICANN PURPOSE:

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

Processing Activity	Responsible Party:	Lawful basis:
Collecting specific data	Registries	6(1)(b) for Registrars 6(1)(f) for Registries

⁵¹ 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.

for Registry Agreement-mandated eligibility requirements		
Collecting specific data for Registry Operator-adopted eligibility requirements	Registries	6(1)(b) for Registrars 6(1)(f) for Registries
Transmission from Rr to Ry RA-mandated eligibility requirements	Registries	6(1)(b) for Registrars 6(1)(f) for Registries
Transmission from Rr to Ry Registry-adopted eligibility requirements	Registries	6(1)(b) for Registrars 6(1)(f) for Registries
Disclosure	Registries	N/A
Data Retention	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.

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 noted that as of the Team’s deliberations, although some members have reported no significant issues in relation to the functioning and operation of the URS and UDRP following the adoption of the Temporary Specification, others reported difficulties as access to domain name registration pre-filing is often unavailable in the absence of an agreed upon standard for “reasonable access”. As a result, the BC, supported by the IPC suggested that disclosure pre-filing to complainants should be added to the processing activities for the purpose of coordinating, operationalizing and facilitating 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, which may also trigger a change to the UDRP as disclosure pre-filing is currently not a part of the UDRP. However this proposed addition was not supported by others who pointed out that in the case of privacy/proxy registrations complainants often do not have access to registrant information pre-filing. Proponents of pre-filing disclosure, BC and IPC, believe that GDRP redaction is distinguishable from a privacy/proxy registration. Similarly, concerns were expressed about how pre-filing disclosures could be implemented in practice as it could result in information being disclosed to anyone claiming to be interested in filing a UDRP complaint, without any obligation to follow this through. BC and IPC believe that this concern can be addressed through policy recommendations to be explored further in a later phase of this EPDP.
- 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.

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.

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 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 #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.

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?

At the time of publication of this Initial Report, the EPDP Team elected to prioritize its policy recommendations with respect to the Temporary Specification. The EPDP Team believes addressing eventual migration to RDAP and sunsetting of WHOIS requirements is premature at this time, i.e., before the policy recommendations are finalized.

Following receipt of further feedback from the ICANN Community and Data Protection Authorities (if received), the EPDP Team will finalize its recommendations with respect to the Temporary Specification. In the process of this finalization, the EPDP Team will consider drafting implementation guidance regarding the eventual migration to RDAP and consequent sunsetting of WHOIS requirements.

While the exact date of the possible elimination of WHOIS requirements will be determined in the policy implementation phase, the EPDP Team notes any current WHOIS requirements negated or made redundant by eventual policy recommendations will no longer be required.

Other recommendations

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](#)

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 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.

5 Next Steps

5.1 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. If adopted by the GNSO Council, it would then be forwarded to the ICANN Board of Directors for its consideration and, potentially, approval as an ICANN Consensus Policy.

Glossary

1. Advisory Committee

An Advisory Committee is a formal advisory body made up of representatives from the Internet community to advise ICANN on a particular issue or policy area. Several are mandated by the ICANN Bylaws and others may be created as needed. Advisory committees have no legal authority to act for ICANN, but report their findings and make recommendations to the ICANN Board.

2. ALAC - At-Large Advisory Committee

ICANN's At-Large Advisory Committee (ALAC) is responsible for considering and providing advice on the activities of the ICANN, as they relate to the interests of individual Internet users (the "At-Large" community). ICANN, as a private sector, non-profit corporation with technical management responsibilities for the Internet's domain name and address system, will rely on the ALAC and its supporting infrastructure to involve and represent in ICANN a broad set of individual user interests.

3. Business Constituency

The Business Constituency represents commercial users of the Internet. The Business Constituency is one of the Constituencies within the Commercial Stakeholder Group (CSG) referred to in Article 11.5 of the ICANN bylaws. The BC is one of the stakeholder groups and constituencies of the Generic Names Supporting Organization (GNSO) charged with the responsibility of advising the ICANN Board on policy issues relating to the management of the domain name system.

4. ccNSO - The Country-Code Names Supporting Organization

The ccNSO the Supporting Organization responsible for developing and recommending to ICANN's Board global policies relating to country code top-level domains. It provides a forum for country code top-level domain managers to meet and discuss issues of concern from a global perspective. The ccNSO selects one person to serve on the board.

5. ccTLD - Country Code Top Level Domain

ccTLDs are two-letter domains, such as .UK (United Kingdom), .DE (Germany) and .JP (Japan) (for example), are called country code top level domains (ccTLDs) and correspond to a country, territory, or other geographic location. The rules and policies for registering domain names in the ccTLDs vary significantly and ccTLD registries limit use of the ccTLD to citizens of the corresponding country.

For more information regarding ccTLDs, including a complete database of designated ccTLDs and managers, please refer to <http://www.iana.org/cctld/cctld.htm>.

6. Domain Name Registration Data

Domain name registration data, also referred to as registration data, refers to the information that registrants provide when registering a domain name and that registrars or registries collect. Some of this information is made available to the public. For interactions between ICANN Accredited Generic Top-Level Domain (gTLD) registrars and registrants, the data elements are specified in the current RAA. For country code Top Level Domains (ccTLDs), the operators of these TLDs set their own or follow their government's policy regarding the request and display of registration information.

7. Domain Name

As part of the Domain Name System, domain names identify Internet Protocol resources, such as an Internet website.

8. DNS - Domain Name System

DNS refers to the Internet domain-name system. The Domain Name System (DNS) helps users to find their way around the Internet. Every computer on the Internet has a unique address - just like a telephone number - which is a rather complicated string of numbers. It is called its "IP address" (IP stands for "Internet Protocol"). IP Addresses are hard to remember. The DNS makes using the Internet easier by allowing a familiar string of letters (the "domain name") to be used instead of the arcane IP address. So instead of typing 207.151.159.3, you can type www.internic.net. It is a "mnemonic" device that makes addresses easier to remember.

9. EPDP – Expedited Policy Development Process

A set of formal steps, as defined in the ICANN bylaws, to guide the initiation, internal and external review, timing and approval of policies needed to coordinate the global Internet's system of unique identifiers. An EPDP may be initiated by the GNSO Council only in the following specific circumstances: (1) to address a narrowly defined policy issue that was identified and scoped after either the adoption of a GNSO policy recommendation by the ICANN Board or the implementation of such an adopted recommendation; or (2) to provide new or additional policy recommendations on a specific policy issue that had been substantially scoped previously, such that extensive, pertinent background information already exists, e.g. (a) in an Issue Report for a possible PDP that was not initiated; (b) as part of a previous PDP that was not completed; or (c) through other projects such as a GNSO Guidance Process.

10. GAC - Governmental Advisory Committee

The GAC is an advisory committee comprising appointed representatives of national governments, multi-national governmental organizations and treaty organizations, and distinct economies. Its function is to advise the ICANN Board on matters of concern to governments. The GAC will operate as a forum for the discussion of government interests and concerns, including consumer interests. As an advisory committee, the GAC has no legal authority to act for ICANN, but will report its findings and recommendations to the ICANN Board.

11. General Data Protection Regulation (GDPR)

The General Data Protection Regulation (EU) 2016/679 (GDPR) is a regulation in EU law on data protection and privacy for all individuals within the European Union (EU) and the European Economic Area (EEA). It also addresses the export of personal data outside the EU and EEA areas.

12. GNSO - Generic Names Supporting Organization

The supporting organization responsible for developing and recommending to the ICANN Board substantive policies relating to generic top-level domains. Its members include representatives from gTLD registries, gTLD registrars, intellectual property interests, Internet service providers, businesses and non-commercial interests.

13. Generic Top Level Domain (gTLD)

"gTLD" or "gTLDs" refers to the top-level domain(s) of the DNS delegated by ICANN pursuant to a registry agreement that is in full force and effect, other than any country code TLD (ccTLD) or internationalized domain name (IDN) country code TLD.

14. gTLD Registries Stakeholder Group (RySG)

The gTLD Registries Stakeholder Group (RySG) is a recognized entity within the Generic Names Supporting Organization (GNSO) formed according to Article X, Section 5 (September 2009) of the Internet Corporation for Assigned Names and Numbers (ICANN) Bylaws.

The primary role of the RySG is to represent the interests of gTLD registry operators (or sponsors in the case of sponsored gTLDs) ("Registries") (i) that are currently under contract with ICANN to provide gTLD registry services in support of one or more gTLDs; (ii) who agree to be bound by consensus policies in that contract; and (iii) who voluntarily choose to be members of the RySG. The RySG may include Interest Groups as defined by Article IV. The RySG represents the views of the RySG to the GNSO Council and the ICANN Board of Directors with particular emphasis on ICANN consensus policies that relate to interoperability, technical reliability and stable operation of the Internet or domain name system.

15. ICANN - The Internet Corporation for Assigned Names and Numbers

The Internet Corporation for Assigned Names and Numbers (ICANN) is an internationally organized, non-profit corporation that has responsibility for Internet Protocol (IP) address space allocation, protocol identifier assignment, generic (gTLD) and country code (ccTLD) Top-Level Domain name system management, and root server system management functions. Originally, the Internet Assigned Numbers Authority (IANA) and other entities performed these services under U.S. Government contract. ICANN now performs the IANA function. As a private-public partnership, ICANN is dedicated to preserving the operational stability of the Internet; to promoting competition; to achieving broad representation of global Internet communities; and to developing policy appropriate to its mission through bottom-up, consensus-based processes.

16. Intellectual Property Constituency (IPC)

The Intellectual Property Constituency (IPC) represents the views and interests of the intellectual property community worldwide at ICANN, with a particular emphasis on trademark, copyright, and related intellectual property rights and their effect and interaction with Domain Name Systems (DNS). The IPC is one of the constituency groups of the Generic Names Supporting Organization (GNSO) charged with the responsibility of advising the ICANN Board on policy issues relating to the management of the domain name system.

17. Internet Service Provider and Connectivity Provider Constituency (ISPCP)

The ISPs and Connectivity Providers Constituency is a constituency within the GNSO. The Constituency's goal is to fulfill roles and responsibilities that are created by relevant ICANN and GNSO bylaws, rules or policies as ICANN proceeds to conclude its organization activities. The ISPCP ensures that the views of Internet Service Providers and Connectivity Providers contribute toward fulfilling the aims and goals of ICANN.

18. Name Server

A Name Server is a DNS component that stores information about one zone (or more) of the DNS name space.

19. Non Commercial Stakeholder Group (NCSG)

The Non Commercial Stakeholder Group (NCSG) is a Stakeholder Group within the GNSO. The purpose of the Non Commercial Stakeholder Group (NCSG) is to represent, through its elected representatives and its Constituencies, the interests and concerns of noncommercial registrants and noncommercial Internet users of generic Top-level Domains (gTLDs). It provides a voice and representation in ICANN processes to: non-profit organizations that serve noncommercial interests; nonprofit services such as education, philanthropies, consumer protection, community organizing, promotion of the arts, public interest policy advocacy, children's welfare, religion, scientific research, and human rights; public interest software concerns; families or individuals who register domain names for noncommercial personal use; and Internet users who are primarily concerned with the noncommercial, public interest aspects of domain name policy.

20. Post Delegation Dispute Resolution Procedures (PDDRPs)

Post-Delegation Dispute Resolution Procedures have been developed to provide those harmed by a new gTLD Registry Operator's conduct an alternative avenue to complain about that conduct. All such dispute resolution procedures are handled by providers external to ICANN and require that complainants take specific steps to address their issues before filing a formal complaint. An Expert Panel will determine whether a Registry Operator is at fault and recommend remedies to ICANN.

21. Registered Name

"Registered Name" refers to a domain name within the domain of a gTLD, whether consisting of two (2) or more (e.g., john.smith.name) levels, about which a gTLD Registry

Operator (or an Affiliate or subcontractor thereof engaged in providing Registry Services) maintains data in a Registry Database, arranges for such maintenance, or derives revenue from such maintenance. A name in a Registry Database may be a Registered Name even though it does not appear in a zone file (e.g., a registered but inactive name).

22. Registrar

The word "registrar," when appearing without an initial capital letter, refers to a person or entity that contracts with Registered Name Holders and with a Registry Operator and collects registration data about the Registered Name Holders and submits registration information for entry in the Registry Database.

23. Registrars Stakeholder Group (RrSG)

The Registrars Stakeholder Group is one of several Stakeholder Groups within the ICANN community and is the representative body of registrars. It is a diverse and active group that works to ensure the interests of registrars and their customers are effectively advanced. We invite you to learn more about accredited domain name registrars and the important roles they fill in the domain name system.

24. Registry Operator

A "Registry Operator" is the person or entity then responsible, in accordance with an agreement between ICANN (or its assignee) and that person or entity (those persons or entities) or, if that agreement is terminated or expires, in accordance with an agreement between the US Government and that person or entity (those persons or entities), for providing Registry Services for a specific gTLD.

25. Registration Data Directory Service (RDDS)

Domain Name Registration Data Directory Service or RDDS refers to the service(s) offered by registries and registrars to provide access to Domain Name Registration Data.

26. Registration Restrictions Dispute Resolution Procedure (RRDRP)

The Registration Restrictions Dispute Resolution Procedure (RRDRP) is intended to address circumstances in which a community-based New gTLD Registry Operator deviates from the registration restrictions outlined in its Registry Agreement.

27. SO - Supporting Organizations

The SOs are the three specialized advisory bodies that advise the ICANN Board of Directors on issues relating to domain names (GNSO and CCNSO) and, IP addresses (ASO).

28. SSAC - Security and Stability Advisory Committee

An advisory committee to the ICANN Board comprised of technical experts from industry and academia as well as operators of Internet root servers, registrars and TLD registries.

29. TLD - Top-level Domain

TLDs are the names at the top of the DNS naming hierarchy. They appear in domain names as the string of letters following the last (rightmost) ".", such as "net" in <http://www.example.net>. The administrator for a TLD controls what second-level names are recognized in that TLD. The administrators of the "root domain" or "root zone" control what TLDs are recognized by the DNS. Commonly used TLDs include .COM, .NET, .EDU, .JP, .DE, etc.

30. Uniform Dispute Resolution Policy (UDRP)

The Uniform Dispute Resolution Policy (UDRP) is a rights protection mechanism that specifies the procedures and rules that are applied by registrars in connection with disputes that arise over the registration and use of gTLD domain names. The UDRP provides a mandatory administrative procedure primarily to resolve claims of abusive, bad faith domain name registration. It applies only to disputes between registrants and third parties, not disputes between a registrar and its customer.

31. Uniform Rapid Suspension (URS)

The Uniform Rapid Suspension System is a rights protection mechanism that complements the existing Uniform Domain-Name Dispute Resolution Policy (UDRP) by offering a lower-cost, faster path to relief for rights holders experiencing the most clear-cut cases of infringement.

32. WHOIS

WHOIS protocol is an Internet protocol that is used to query databases to obtain information about the registration of a domain name (or IP address). The WHOIS protocol was originally specified in RFC 954, published in 1985. The current specification is documented in RFC 3912. ICANN's gTLD agreements require registries and registrars to offer an interactive web page and a port 43 WHOIS service providing free public access to data on registered names. Such data is commonly referred to as "WHOIS data," and includes elements such as the domain registration creation and expiration dates, nameservers, and contact information for the registrant and designated administrative and technical contacts.

WHOIS services are typically used to identify domain holders for business purposes and to identify parties who are able to correct technical problems associated with the registered domain.

Annex A - Background

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](#).

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](#).

Annex B – EPDP Team Membership and Attendance

EPDP Team Membership and Attendance

The members of the EPDP Team are:

	Members / Liaisons	Affiliation	SOI	% of Meetings Attended⁵²
1	Alan Woods	RySG	SOI	90.3
2	Kristina Rosette	RySG	SOI	90.3
3	Marc Anderson	RySG	SOI	100
4	James M. Bladel	RrSG	SOI	71
5	Matt Serlin	RrSG	SOI	61.3
6	Emily Taylor	RrSG	SOI	90.3
7	Alex Deacon	IPC	SOI	93.5
8	Diane Plaut	IPC	SOI	96.8
9	Margie Milam	BC	SOI	93.5
10	Mark Svancarek	BC	SOI	93.5
11	Esteban Lescano	ISPCP	SOI	54.8
12	Thomas Rickert	ISPCP	SOI	90.3
13	Stephanie Perrin	NCSG	SOI	96.8
14	Ayden Férdeline	NCSG	SOI	80.6
15	Milton Mueller	NCSG	SOI	77.4
16	Julf Helsingius	NCSG	SOI	90.3
17	Amr Elsadr	NCSG	SOI	87.1

⁵² This does not include attendance to F2F meetings which is recorded separately. See <https://community.icann.org/x/rQarBQ>, <https://community.icann.org/x/0QO8BQ>, <https://community.icann.org/x/1A08BQ>, <https://community.icann.org/x/2gO8BQ> and <https://community.icann.org/x/3wO8BQ>.

	Members / Liaisons	Affiliation	SOI	% of Meetings Attended⁵²
18	Farzaneh Badiei	NCSG	SOI	74.2
19	Georgios Tselentis	GAC	SOI	67.7
20	Kavouss Arasteh	GAC	SOI	74.2
21	Ashley Heineman	GAC	SOI	74.2
22	Alan Greenberg	ALAC	SOI	93.5
23	Hadia Elminiawi	ALAC	SOI	100
24	Benedict Addis	SSAC	SOI	87.1
25	Ben Butler	SSAC	SOI	93.5
26	Chris Disspain	ICANN Board Liaison	SOI	51.6
27	Leon Felipe Sanchez	ICANN Board Liaison	SOI	67.7
28	Rafik Dammak	GNSO Council Liaison	SOI	100
29	Trang Nguyen	ICANN Org Liaison (GDD)	SOI	Not tracked
30	Dan Halloran	ICANN Org Liaison (Legal)	n/a	Not tracked
31	Kurt Pritz	EPDP Team Chair	SOI	96.8

The alternates of the EPDP Team are:

	Alternates	Affiliation	SOI	% of Meetings Attended
1	Beth Bacon	RySG	SOI	12.9
2	Arnaud Wittersheim	RySG	SOI	3.2
3	Sebastien Ducos	RySG	SOI	3.2
4	Volker Greimann	RrSG	SOI	6.5

5	Lindsay Hamilton-Reid	RrSG	SOI	35.5
6	Theo Geurts	RrSG	SOI	25.8
7	Brian King	IPC	SOI	9.7
8	Steve DelBianco	BC	SOI	0
9	Fiona Assonga	ISPCP	SOI	0
10	Tatiana Tropina	NCSG	SOI	22.6
11	David Cake	NCSG	SOI	3.2
12	Collin Kurre	NCSG	SOI	25.8
13	Chris Lewis-Evans	GAC	SOI	38.7
14	Rahul Gosain	GAC	SOI	16.1
15	Laureen Kapin	GAC	SOI	22.6
16	Holly Raiche	ALAC	SOI	0
17	Seun Ojedeji	ALAC	SOI	3.2
18	Greg Aaron	SSAC	SOI	6.5
19	Rod Rasmussen	SSAC	SOI	9.7

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

BC – Business 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

Annex C - Community Input

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>.

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.

Annex D – Data Elements Workbooks

Table of Contents:

#	Purpose	Link
1	As subject to Registry and Registrar terms, conditions and policies, and ICANN Consensus Policies: <ul style="list-style-type: none"> 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 	LINK
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 other purposes identified herein	LINK
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	LINK
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	Rr – LINK Ry – LINK
5	Handle contractual compliance monitoring requests, audits, and complaints submitted by Registry Operators, Registrars, Registered Name Holders, and other Internet users	LINK
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.	LINK
7	Enabling validation to confirm that Registered Name Holder meets optional gTLD registration policy eligibility criteria voluntarily adopted by Registry Operator.	LINK

In this document, 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 may pursue, such as billing customers, 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.

For those data elements marked as “(optional)”, these are optional for the RNH to provide. (Note, the EPDP Team is still considering whether optional also means optional for the registrar to offer the ability to the RNH to provide these data elements, or whether it would be required for the registrar to offer this ability).

Note that data elements are either collected from the data subject, or automatically generated by the registrar or registry.

1

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.

(also referenced by the EPDP Team as Purpose A)
(Purposes by Actor (A))(TempSpec - 4.4.1)

Purpose Rationale:

1) If the purpose is based on an ICANN contract, cite the relevant section of the ICANN contracts that corresponds to the above purpose, if any.

- RAA - <https://www.icann.org/resources/pages/approved-with-specs-2013-09-17-en>

Yes, this purpose is lawful based on ICANN's mission to coordinate the allocation and assignment of names in the root zone of the Domain Name System. Specifically, Section 3.2 of the RAA "Submission of Registered Name Holder Data to Registry" refers to what data elements must be placed in the Registry Database as a part of the domain registration (<https://www.icann.org/resources/pages/approved-with-specs-2013-09-17-en>).

2) Is the purpose in violation with ICANN's bylaws?

No, it is not in violation of ICANN's Bylaws. Specifically, Article 1, Section 1.1 Mission (a)(i) Coordinates the allocation and assignment of names in the root zone of the Domain Name System ("DNS") and coordinates the development and implementation of policies concerning the registration of second-level domain names in generic top-level domains ("gTLDs"). In this role, ICANN's scope is to coordinate the development and implementation of policies <https://www.icann.org/resources/pages/governance/bylaws-en/#article1>.

Further, Articles G-1 and G-2 stipulate, "issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, security and/or stability of the Internet, registrar services, registry services, or the DNS;" and "Examples of the above include, without limitation: principles for allocation of registered names in a TLD (e.g., first-come/first-served, timely renewal, holding period after expiration);"

3) Are there any "picket fence" considerations related to this purpose?

This purpose is related to WHOIS, which is within the Picket Fence. Specifically, Specification 1 of the Registry Agreement and Specification 4 of the Registrar Accreditation Agreement both refer to categories of issues and principles of allocation of registered names in a TLD.

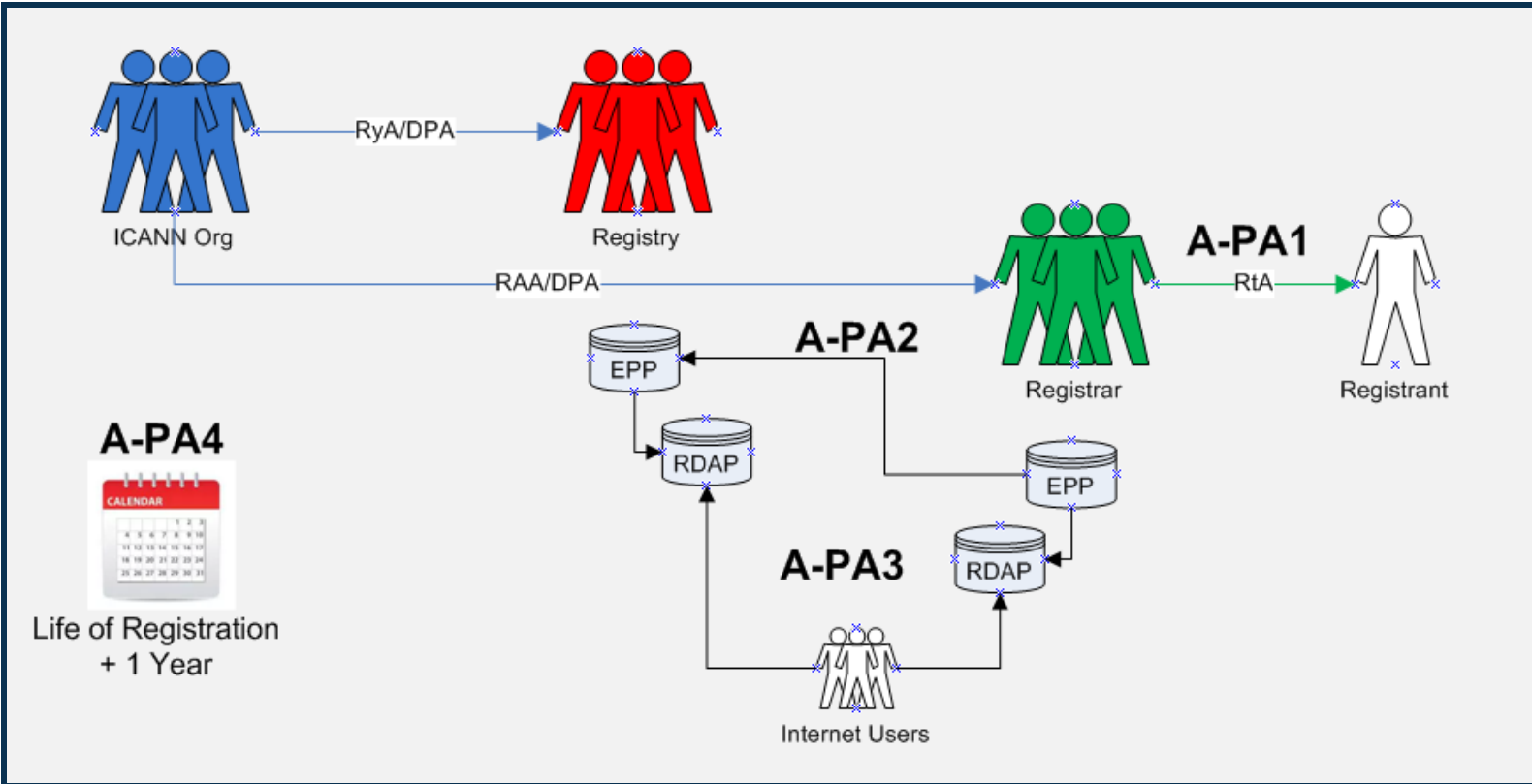
Lawfulness of Processing Test:

Processing Activity:	Responsible Party⁵³: (Charter Questions 3k, 3l, 3m)	Lawful Basis: (Is the processing necessary to achieve the purpose?)
<p>A-PA1: Collection of registration data establishing registrant rights and allocating string to registrant (Charter Question 2b)</p>	<p>ICANN Registrars Registries</p>	<p>6(1)(b) for Registrars</p> <p>This is a 6(1)(b) purpose for Registrars because it is necessary to collect registrant data to allocate a string to a registrant. Without collecting minimal registrant data, the contracted party has no way of tracing the string back to registrant and is not able to deliver its side of the contract.</p> <p>Purpose E-Rr, Escrow for Registrars (and by extension for data transferred to Registries, Purpose E-Ry) depends on the collection of registration data as part of this Processing Activity where Registrars collect registration data from the Registrant (Data Subject). Transparency of collection to the Registrant (Data Subject) is a requirement for purpose of escrow.</p> <p>**6(1)(f) for Registries and ICANN</p> <p>This is a 6(1)(f) purpose for Registries because a Registry does not have a contractual relationship with the Data subject. ICANN and Registry have a contract with the Registrar, however this is not a valid basis for these two parties to process the data subject’s data.</p> <p>Registries, at the behest of ICANN (per the RyA) must gather data in order to enter a domain name, as per a Registrar request (not a data subject request).</p> <p>*However, 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.</p>
<p>A-PA2: Transmission of registration data from Registrar to Registry (Charter Questions 2c, 2d, 2e, 2i)</p>	<p>Registrars Registries</p>	<p>Certain data elements (Domain Name and Name Servers) 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.</p> <p>The transfer of the registration data, apart from the aforementioned data elements, from Registrar to Registry,</p>

⁵³ Note, the responsible party is not necessarily the party carrying out the processing activity

		<p>where the Registry operates a “Thick Whois,” is lawful under Art. 6(1)(f) of the GDPR.</p> <p>**Full registrant data CAN be requested by the Registry based on Art. 6(1)(f), for example, for the purpose of administering the application of a Registry Acceptable Use Policy (AUP) (or equivalent); such processing is considered justifiable under the Art. 6(1)(f) balancing test when considering the nature of the data, the envisaged limited use of the data, and the likelihood of the impact on the privacy rights of the Registered Name Holder when weighed against the safety and integrity of the zone.</p> <p>* However, 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.</p>
<p>A-PA3: Disclosure of registration data</p> <p>(Charter Questions 2f (gating questions), 2j)</p>	<p>Registrars Registries</p>	<p>Certain data elements (domain name and nameservers) would be required to 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.</p> <p>6(1)(f)</p>
<p>A-PA4: Retention of registration data by Registrar</p> <p>(Charter Questions 2g)</p>	<p>ICANN</p>	<p>Yes. 6(1)(f)</p> <p>This is a 6(1)(f) purpose because although there is likely a legitimate interest in providing mechanisms for safeguarding Registered Name Holders' Registration Data in the event of a dispute over ownership or an improper transfer, it is not technically necessary to retain the data in order to allocate a string to a registered name holder, and is therefore not necessary to perform the registration contract.</p> <p>The EPDP Team tentatively agreed to a registration plus one-year retention period in order to conform with the Transfer Dispute Resolution Policy requirements.</p> <p>Note that certain jurisdictions may have requirements in place that have resulted in some Registrars requesting data retention waivers which may result in different retention period requirements.</p>

Data Elements Map:



Data Elements Matrix:

“1” = Required “(1)” = Optional “-” = Not Required or Optional

Data Element	Collection A-PA1	Transmission A-PA2	Disclosure A-PA3	Retention A-PA4		
Domain Name	1	1	1	1		
Registry Domain ID	1	1	1	1		
Registrar Whois Server	1	1	-	1		
Registrar URL	1	1	-	1		
Updated Date	1	1	-	1		
Creation Date	1	1	-	1		
Registry Expiry Date	1	1	-	1		
Registrar Registration Expiration Date	1	1	-	1		
Registrar	1	1	-	1		
Registrar IANA ID	1	1	-	1		
Registrar Abuse Contact Email	1	1	-	1		
Registrar Abuse Contact Phone	1	1	-	1		
Reseller	1	1	-	1		
Domain Status	1	1	-	1		
Registry Registrant ID	1	1	1	1		
Registrant Fields						

Data Element	Collection A-PA1	Transmission A-PA2	Disclosure A-PA3	Retention A-PA4		
<input checked="" type="checkbox"/> Name	1	-	-	1		
<input checked="" type="checkbox"/> Organization (opt.)	-	-	-	-		
<input checked="" type="checkbox"/> Street	1	-	-	1		
<input checked="" type="checkbox"/> City	1	-	-	1		
<input checked="" type="checkbox"/> State/province	1	-	-	1		
<input checked="" type="checkbox"/> Postal code	1	-	-	1		
<input checked="" type="checkbox"/> Country	1	-	-	1		
<input checked="" type="checkbox"/> Phone	1	-	-	1		
<input checked="" type="checkbox"/> Phone ext (opt.)	-	-	-	-		
<input checked="" type="checkbox"/> Fax (opt.)	-	-	-	-		
<input checked="" type="checkbox"/> Fax ext (opt.)	-	-	-	-		
<input checked="" type="checkbox"/> Email	1	-	-	1		
2nd E-Mail address	-	-	-	-		
Admin ID	-	-	-	-		
Admin Fields						
<input checked="" type="checkbox"/> Name	-	-	-	-		
<input checked="" type="checkbox"/> Organization (opt.)	-	-	-	-		
<input checked="" type="checkbox"/> Street	-	-	-	-		
<input checked="" type="checkbox"/> City	-	-	-	-		
<input checked="" type="checkbox"/> State/province	-	-	-	-		
<input checked="" type="checkbox"/> Postal code	-	-	-	-		
<input checked="" type="checkbox"/> Country	-	-	-	-		
<input checked="" type="checkbox"/> Phone	-	-	-	-		
<input checked="" type="checkbox"/> Phone ext (opt.)	-	-	-	-		
<input checked="" type="checkbox"/> Fax (opt.)	-	-	-	-		
<input checked="" type="checkbox"/> Fax ext (opt.)	-	-	-	-		
<input checked="" type="checkbox"/> Email	-	-	-	-		
Tech ID	-	-	-	-		
Tech Fields						
<input checked="" type="checkbox"/> Name	-	-	-	-		
<input checked="" type="checkbox"/> Organization (opt.)	-	-	-	-		
<input checked="" type="checkbox"/> Street	-	-	-	-		
<input checked="" type="checkbox"/> City	-	-	-	-		
<input checked="" type="checkbox"/> State/province	-	-	-	-		
<input checked="" type="checkbox"/> Postal code	-	-	-	-		
<input checked="" type="checkbox"/> Country	-	-	-	-		
<input checked="" type="checkbox"/> Phone	-	-	-	-		
<input checked="" type="checkbox"/> Phone ext (opt.)	-	-	-	-		
<input checked="" type="checkbox"/> Fax (opt.)	-	-	-	-		

Data Element	Collection A-PA1	Transmission A-PA2	Disclosure A-PA3	Retention A-PA4		
<input type="checkbox"/> Fax ext (opt.)	-	-	-	-		
<input type="checkbox"/> Email	-	-	-	-		
NameServer(s)	1	1	1	1		
DNSSEC	(1)	(1)	-	(1)		
Name Server IP Address	1	1	-	1		
Last Update of Whois Database	1	1	-	1		

2

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.⁵⁴⁵⁵⁵⁶

(also referenced by the EPDP Team as Purpose B)

(Purposes by Actor (B replacing B1, B2, G, H, I, J, K, and L))(TempSpec - 4.4.2, 4.4.3, 4.4.8, 4.4.9, Appx C)

Purpose Rationale:

1) If the purpose is based on an ICANN contract, cite the relevant section of the ICANN contracts that corresponds to the above purpose, if any.

- RAA - <https://www.icann.org/resources/pages/approved-with-specs-2013-09-17-en>

Yes, this purpose is lawful based on ICANN’s mission to coordinate the allocation and assignment of names in the root zone of the Domain Name System. Specifically, ICANN contracts reference the requirement for the maintenance of and access to accurate and up-to-date information concerning domain name registrations.

2) Is the purpose in violation with ICANN's bylaws?

No, it is not in violation of ICANN’s Bylaws, see ICANN Bylaws - Section 1.1(d)(ii), Section 1.2(a), Section 4.6(e)(i), Annex G1 and G2.

3) Are there any “picket fence” considerations related to this purpose?

This is within the Picket Fence, as the purpose specially refers to data already collected.

The WHOIS system, including 3rd party access, is within the Picket Fence, note specifically the Consensus Policies and Temporary Policies specification in the Registrar Accreditation Agreement (RAA) and Registry Agreement (RAA - 1.3.4. maintenance of and access to accurate and up-to-date information concerning Registered Names and name servers; Registry Agreement - maintenance of and access to accurate and up-to-date information concerning domain name registrations).

⁵⁴ This language would be accompanied by specific questions in the Initial Report such as "Is this language sufficiently specific and, if not, how do you propose to modify it?"

⁵⁵ Related policy recommendation: 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.

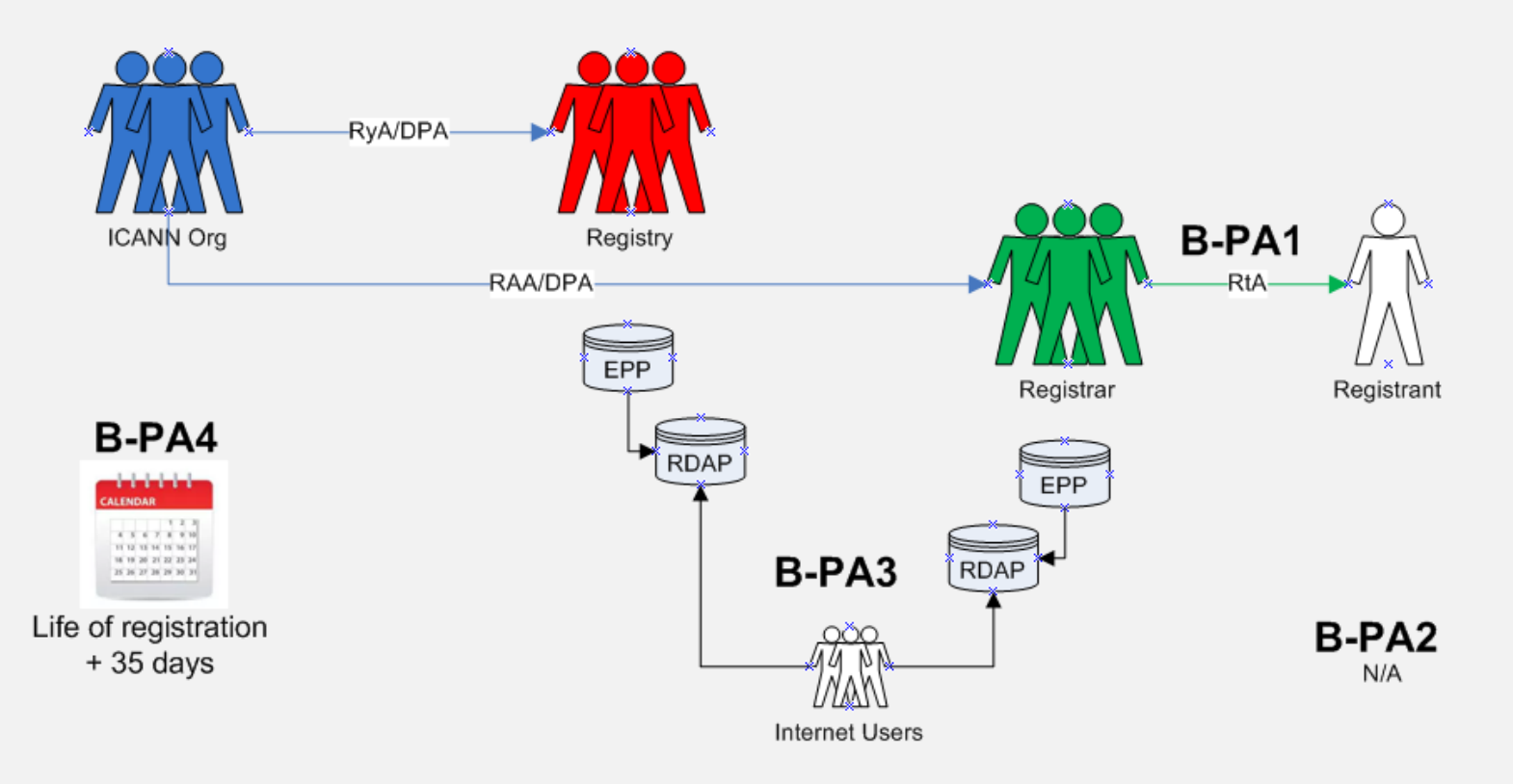
⁵⁶ Related policy recommendation: requirements related to the accuracy of registration data under the current ICANN contracts and consensus policies shall not be affected by this policy.

Lawfulness of Processing Test:

Processing Activity:	Responsible Party ⁵⁷ :: (Charter Questions 3k, 3l, 3m)	Lawful Basis: (Is the processing necessary to achieve the purpose?)
<p>B-PA1: Collection of registration data</p> <p>Note: as this purpose refers to data already collected, please refer to Purpose A Workbook for further information.</p> <p>(Charter Question 2b)</p>	<p>ICANN Registrars Registries</p>	<p>The lawful basis for this processing activity is Art.6(1)(f) of the GDPR because although there may be a legitimate interest in disclosing non-public RDDS/WHOIS to third parties (such as law enforcement, IP interests, etc.), this disclosure is not technically necessary to perform the registration contract between the registrant and registrar.</p>
<p>B-PA2: Transmission of registration data from Registrar to Registry</p> <p>(Charter Questions 2c, 2d, 2e, 2i)</p>	<p>N/A</p>	<p>N/A</p>
<p>B-PA3: Disclosure of non- public, already collected, RDDS/WHOIS to third parties</p> <p>(Charter Questions 2f (gating questions), 2j)</p>	<p>ICANN</p>	<p>This is a 6(1)(f) processing activity because although there may be a legitimate interest in disclosing non-public RDDS/WHOIS to third parties (such as law enforcement, IP interests, etc.), this disclosure is not technically necessary to perform the registration contract between the registrant and registrar. (Note: the requisite balancing test must be performed for each third-party type of disclosure.)</p>
<p>B-PA4: Retention of registration data by registrar</p> <p>(Charter Questions 2g) Note: as this purpose refers to data already collected, please refer to Purpose A Workbook for further information. (This purpose does not call for additional retention periods.)</p>	<p>ICANN</p>	<p>TBD</p>

⁵⁷ Note, the responsible party is not necessarily the party carrying out the processing activity

Data Elements Map:



Data Elements Matrix:

"1" = Required "(1)" = Optional "-" = Not Required or Optional

Data Element	Collection B-PA1	Transmission B-PA2	Disclosure B-PA3	Retention B-PA4	Redacted B-PA5
Domain Name	1	-	1		No
Registry Domain ID	1	-	1	-	Yes
Registrar Whois Server	1	-	1	-	No
Registrar URL	1	-	1	-	No
Updated Date	1	-	1	-	No
Creation Date	1	-	1	-	No
Registry Expiry Date	1	-	1	-	No
Registrar Registration Expiration Date	1	-	1	-	No
Registrar	1	-	1	-	No
Registrar IANA ID	1	-	1	-	No
Registrar Abuse Contact Email	1	-	1	-	No
Registrar Abuse Contact Phone	1	-	1	-	No
Reseller	1	-	1		No
Domain Status	1	-	1	-	No
Registry Registrant ID	1	-	1	-	Yes

Data Element	Collection B-PA1	Transmission B-PA2	Disclosure B-PA3	Retention B-PA4	Redacted B-PA5	
Registrant Fields						
<input checked="" type="checkbox"/> Name	1	-	1	-	Yes	
<input checked="" type="checkbox"/> Organization (opt.)	-	-	-	-	No	
<input checked="" type="checkbox"/> Street	1	-	1	-	Yes	
<input checked="" type="checkbox"/> City	1	-	1	-	Yes	
<input checked="" type="checkbox"/> State/province	1	-	1	-	No	
<input checked="" type="checkbox"/> Postal code	1	-	1	-	Yes	
<input checked="" type="checkbox"/> Country	1	-	1	-	No	
<input checked="" type="checkbox"/> Phone	1	-	1	-	Yes	
<input checked="" type="checkbox"/> Phone ext (opt.)	-	-	-	-	-	
<input checked="" type="checkbox"/> Fax (opt.)	-	-	-	-	-	
<input checked="" type="checkbox"/> Fax ext (opt.)	-	-	-	-	-	
<input checked="" type="checkbox"/> Email ⁵⁸	1	-	1	-	No	
2nd E-Mail address	-	-	-	-	-	
Admin ID	-	-	-	-	-	
Admin Fields						
<input checked="" type="checkbox"/> Name	-	-	-	-	-	
<input checked="" type="checkbox"/> Organization (opt.)	-	-	-	-	-	
<input checked="" type="checkbox"/> Street	-	-	-	-	-	
<input checked="" type="checkbox"/> City	-	-	-	-	-	
<input checked="" type="checkbox"/> State/province	-	-	-	-	-	
<input checked="" type="checkbox"/> Postal code	-	-	-	-	-	
<input checked="" type="checkbox"/> Country	-	-	-	-	-	
<input checked="" type="checkbox"/> Phone	-	-	-	-	-	
<input checked="" type="checkbox"/> Phone ext (opt.)	-	-	-	-	-	
<input checked="" type="checkbox"/> Fax (opt.)	-	-	-	-	-	
<input checked="" type="checkbox"/> Fax ext (opt.)	-	-	-	-	-	
<input checked="" type="checkbox"/> Email	-	-	-	-	-	
Tech ID	(1)	-	-	-	-	
Tech Fields						
<input checked="" type="checkbox"/> Name	(1)	-	(1)	-	Yes	
<input checked="" type="checkbox"/> Organization (opt.)	-	-	-	-	-	
<input checked="" type="checkbox"/> Street	-	-	-	-	-	
<input checked="" type="checkbox"/> City	-	-	-	-	-	
<input checked="" type="checkbox"/> State/province	-	-	-	-	-	
<input checked="" type="checkbox"/> Postal code	-	-	-	-	-	

⁵⁸ 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.

Data Element	Collection B-PA1	Transmission B-PA2	Disclosure B-PA3	Retention B-PA4	Redacted B-PA5	
<input checked="" type="checkbox"/> Country	-	-	-	-	-	
<input checked="" type="checkbox"/> Phone	(1)	-	(1)	-	Yes	
<input checked="" type="checkbox"/> Phone ext (opt.)	-	-	-	-	-	
<input checked="" type="checkbox"/> Fax (opt.)	-	-	-	-	-	
<input checked="" type="checkbox"/> Fax ext (opt.)	-	-	-	-	-	
<input checked="" type="checkbox"/> Email ⁵⁹	(1)	-	(1)	-	No	
NameServer(s)	1		1	-	No	
DNSSEC	(1)	-	(1)	-	No	
Name Server IP Address	1	-	1	-	No	
Last Update of Whois Database	1	-	1	-	No	

⁵⁹ Idem

3

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

(also referenced by the EPDP Team as Purpose C)
(Purposes by Actor (C))(TempSpec - 4.4.3, 4.4.5, 4.4.6, 4.4.7, 7.2.2)

Purpose Rationale:**1) If the purpose is based on an ICANN contract, cite the relevant section of the ICANN contracts that corresponds to the above purpose, if any.**

Yes, this purpose is lawful based on ICANN's mission to coordinate the allocation and assignment of names in the root zone of the Domain Name System. Specifically, section 3.7.7.3 of the RAA refers to providing and updating contact information to facilitate timely resolution of any problems that arise in connection with the Registered Name.

2) Is the purpose in violation with ICANN's bylaws?

No, it is not in violation of ICANN's Bylaws. Specifically, Article 1, Section 1.1 Mission (a)(i) Coordinates the allocation and assignment of names in the root zone of the Domain Name System ("**DNS**") and coordinates the development and implementation of policies concerning the registration of second-level domain names in generic top-level domains ("**gTLDs**"). In this role, ICANN's scope is to coordinate the development and implementation of policies <https://www.icann.org/resources/pages/governance/bylaws-en/#article1>.

Further, Articles G-1 and G-2 stipulate, "issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, security and/or stability of the Internet, registrar services, registry services, or the DNS;" and "Examples of the above include, without limitation: principles for allocation of registered names in a TLD (e.g., first-come/first-served, timely renewal, holding period after expiration);".

3) Are there any "picket fence" considerations related to this purpose?

This purpose is related to WHOIS, which is within the Picket Fence. Specifically, Specification 1 of the Registry Agreement and Specification 4 of the Registrar Accreditation Agreement both refer to categories of issues and principles of allocation of registered names in a TLD.

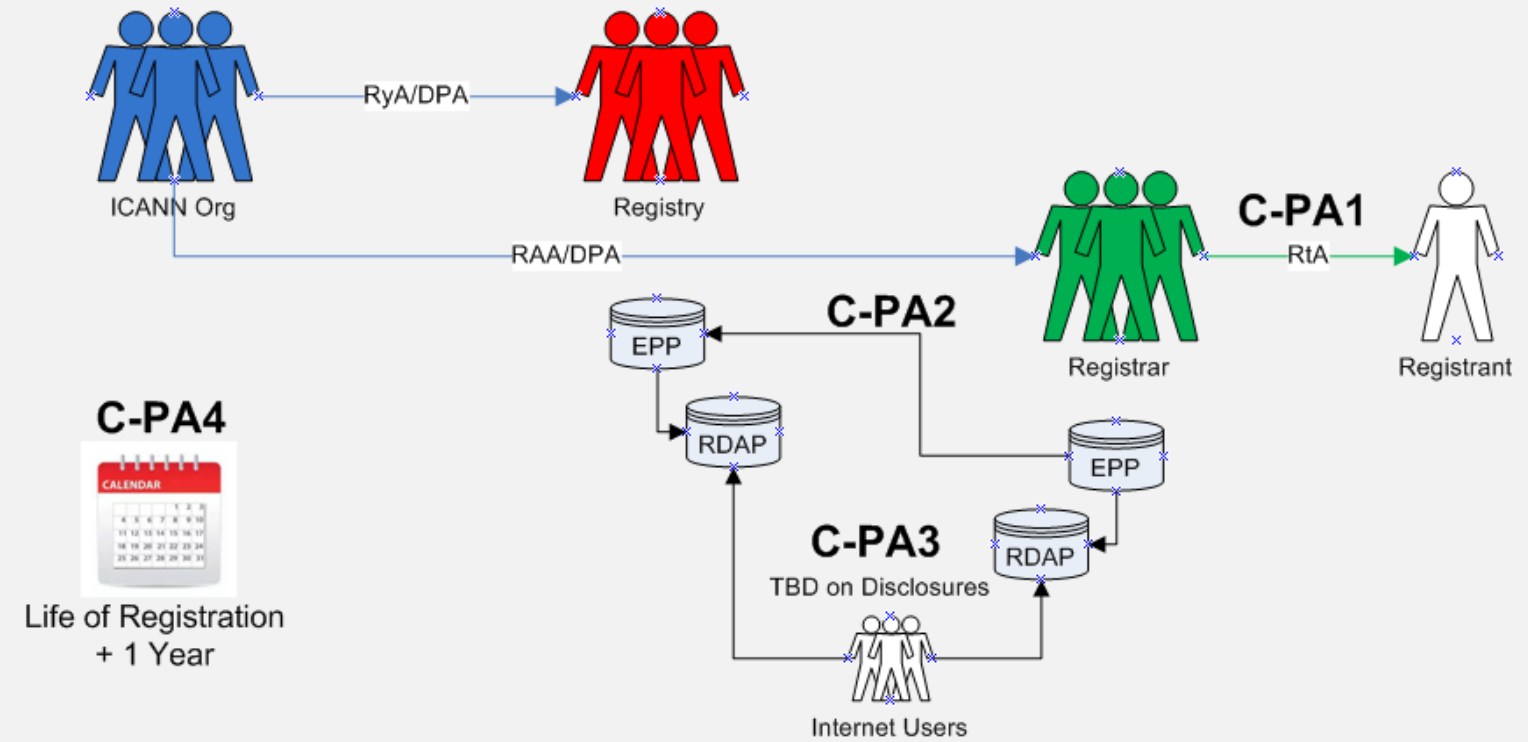
Lawfulness of Processing Test:

Processing Activity:	Responsible Party⁶⁰: (Charter Questions 3k, 3l, 3m)	Lawful Basis: (Is the processing necessary to achieve the purpose?)
<p>C-PA1: Collection of registration data for contactability/notification purposes (Charter Question 2b)</p>	<p>ICANN Registrar Registries</p>	<p>For Registrars 6(1)(b) - For registrars: This is a 6(1)(b) purpose because it is necessary to collect registrant data so that the registrar can contact the registrant in the event a communication is necessary to maintain the domain operation.</p> <p>For Registries 6(1)(f) - For third parties who would like to report technical issues to a technical contact: This would be a 6(1)(f) purpose because while there may be a legitimate interest in third parties contacting the registrant (for example, to inform the registrant or designee of a technical issue with the domain name), this is not necessary for the performance of the contract.</p>
<p>C-PA2: Transmission of registration data from Registrar to Registry (Charter Questions 2c, 2d, 2e, 2i)</p>	<p>ICANN Registries</p>	<p>This would be a 6(1)(f) processing activity because while there may be a legitimate interest in third parties contacting the registrant (for example, to inform the registrant or designee of a technical issue with the domain name), this is not necessary for the performance of the contract from a registry perspective.</p>
<p>C-PA3: Disclosure of registration data⁶¹ (Charter Questions 2f (gating questions), 2j)</p>	<p>TBD</p>	<p>TBD</p>
<p>C-PA4: Retention of registration data (Charter Questions 2g)</p>	<p>ICANN</p>	<p>N/A – see A-PA4</p>

⁶⁰ Note, the responsible party is not necessarily the party carrying out the processing activity

⁶¹ Addressed as part of Purpose B

Data Elements Map:



Data Elements Matrix:

"1" = Required "(1)" = Optional⁶² "-" = Not Required or Optional

Data Element	Collection C-PA1	Transmission C-PA2	Disclosure C-PA3	Retention C-PA4		
Domain Name	1	1	-	1		
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	1	1	-	1		
Registrar Abuse Contact Phone	-	-	-	-		

⁶² Optional data elements for the Registered Name Holder (RNH) to provide, but required for the registrar to offer as data elements the RNH may provide.

Data Element	Collection C-PA1	Transmission C-PA2	Disclosure C-PA3	Retention C-PA4		
Reseller	-	-	-	-		
Domain Status	-	-	-	-		
Registry Registrant ID	-	-	-	-		
Registrant Fields						
<input checked="" type="checkbox"/> Name	1	1	-	1		
<input checked="" type="checkbox"/> Organization (opt.)	(1)	(1)	-	(1)		
<input checked="" type="checkbox"/> Street	1	1	-	1		
<input checked="" type="checkbox"/> City	1	1	-	1		
<input checked="" type="checkbox"/> State/province	1	1	-	1		
<input checked="" type="checkbox"/> Postal code	1	1	-	1		
<input checked="" type="checkbox"/> Country	1	1	-	1		
<input checked="" type="checkbox"/> Phone	1	1	-	1		
<input checked="" type="checkbox"/> Phone ext (opt.)	(1)	(1)	-	(1)		
<input checked="" type="checkbox"/> Fax (opt.)	(1)	(1)	-	(1)		
<input checked="" type="checkbox"/> Fax ext (opt.)	(1)	(1)	-	(1)		
<input checked="" type="checkbox"/> Email	1	1	-	1		
2nd E-Mail address	-	-	-	-		
Admin ID	-	-	-	-		
Admin Fields						
<input checked="" type="checkbox"/> Name	-	-	-	-		
<input checked="" type="checkbox"/> Organization (opt.)	-	-	-	-		
<input checked="" type="checkbox"/> Street	-	-	-	-		
<input checked="" type="checkbox"/> City	-	-	-	-		
<input checked="" type="checkbox"/> State/province	-	-	-	-		
<input checked="" type="checkbox"/> Postal code	-	-	-	-		
<input checked="" type="checkbox"/> Country	-	-	-	-		
<input checked="" type="checkbox"/> Phone	-	-	-	-		
<input checked="" type="checkbox"/> Phone ext (opt.)	-	-	-	-		
<input checked="" type="checkbox"/> Fax (opt.)	-	-	-	-		
<input checked="" type="checkbox"/> Fax ext (opt.)	-	-	-	-		
<input checked="" type="checkbox"/> Email	-	-	-	-		
Tech ID	(1)	-	-	-		
Tech Fields						
<input checked="" type="checkbox"/> Name	(1)	(1)	-	(1)		
<input checked="" type="checkbox"/> Organization (opt.)	-	-	-	-		
<input checked="" type="checkbox"/> Street ⁶³	-	-	-	-		
<input checked="" type="checkbox"/> City	-	-	-	-		

⁶³ The GAC representatives are of the view that physical address should also be requested by the registrar (but optional for the RNH to provide)

Data Element	Collection C-PA1	Transmission C-PA2	Disclosure C-PA3	Retention C-PA4		
<input checked="" type="checkbox"/> State/province	-	-	-	-		
<input checked="" type="checkbox"/> Postal code	-	-	-	-		
<input checked="" type="checkbox"/> Country	-	-	-	-		
<input checked="" type="checkbox"/> Phone	(1)	(1)	-	(1)		
<input checked="" type="checkbox"/> Phone ext (opt.)	-	-	-	-		
<input checked="" type="checkbox"/> Fax (opt.)	-	-	-	-		
<input checked="" type="checkbox"/> Fax ext (opt.)	-	-	-	-		
<input checked="" type="checkbox"/> Email	(1)	(1)	-	(1)		
NameServer(s)	-	-	-	-		
DNSSEC	-	-	-	-		
Name Server IP Address	-	-	-	-		
Last Update of Whois Database	-	-	-	-		

4

ICANN PURPOSE:**--For Registrars Only--**

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

(also referenced by the EPDP Team as Purpose E-Rr)
(Purposes by Actor (E))(TempSpec - 4.4.11, Section 5.3, Appendix B)

Purpose Rationale:

1) If the purpose is based on an ICANN contract, cite the relevant section of the ICANN contracts that corresponds to the above purpose, if any.

- Registrar Data Escrow Program: <https://www.icann.org/resources/pages/registrar-data-escrow-2015-12-01-en>
- Data Fields Source: <https://www.icann.org/en/system/files/files/rde-specs-09nov07-en.pdf>

Escrowing the data is supported by ICANN's mandate to provide for security and stability in the DNS and this purpose is primarily protecting the registrant's rights. Escrow exists because Registrants have a reasonable expectation of business continuity.

It is reasonable to expect that a DPA would consider the escrow of customer data critical to the delivery of the service being provided to be common business practice and legal under GDPR provided appropriate contractual relationships are in place with the escrow agent to ensure that the data, once transferred to the escrow agent is afforded appropriate protection.

While technical and business resiliency could be achieved via other mechanisms, the escrow of data necessary to deliver the service is a generally accepted practice that is likely to be considered necessary to achieve the purpose of "...safeguarding registered name holder's registration data in the event of a business or technical failure, or other unavailability..."

While all contracted parties that have to be compliant with GDPR need to make sure there are protections against data loss and mechanisms to enable swift data recovery, ICANN is operating at the global level where customers can register domain names with registrars globally and the registry operators are based in numerous jurisdictions, it is important to have interoperability of escrow agents. Requiring all contracted parties to use the same policies for both escrowing data and applying the same standards to escrow agents for making data available, is necessary for contingency planning at the global level.

2) Is the purpose in violation with ICANN's bylaws?

No, providing a safety net for registrants in the event of registry technical or business failure seems within ICANN's remit.

1.1(a)(i) Coordinates the allocation and assignment of names in the root zone of the Domain Name System ("DNS") and coordinates the development and implementation of policies concerning the registration of second-level

domain names in generic top-level domains ("gTLDs"). In this role, ICANN's scope is to coordinate the development and implementation of policies:

- For which uniform or coordinated resolution is reasonably necessary to facilitate the openness, interoperability, resilience, security and/or stability of the DNS including, with respect to gTLD registrars and registries, policies in the areas described in Annex G-1 and Annex G-2; and
- That are developed through a bottom-up consensus-based multistakeholder process and designed to ensure the stable and secure operation of the Internet's unique names systems.

The issues, policies, procedures, and principles addressed in Annex G-1 and Annex G-2 with respect to gTLD registrars and registries shall be deemed to be within ICANN's Mission.

3) Are there any “picket fence” considerations related to this purpose?

Only with respect to the data model(s) defined within RDDS/Whois consensus policies. Agreements between ICANN and escrow providers are not within scope of the picket fence.

Lawfulness of Processing Test:

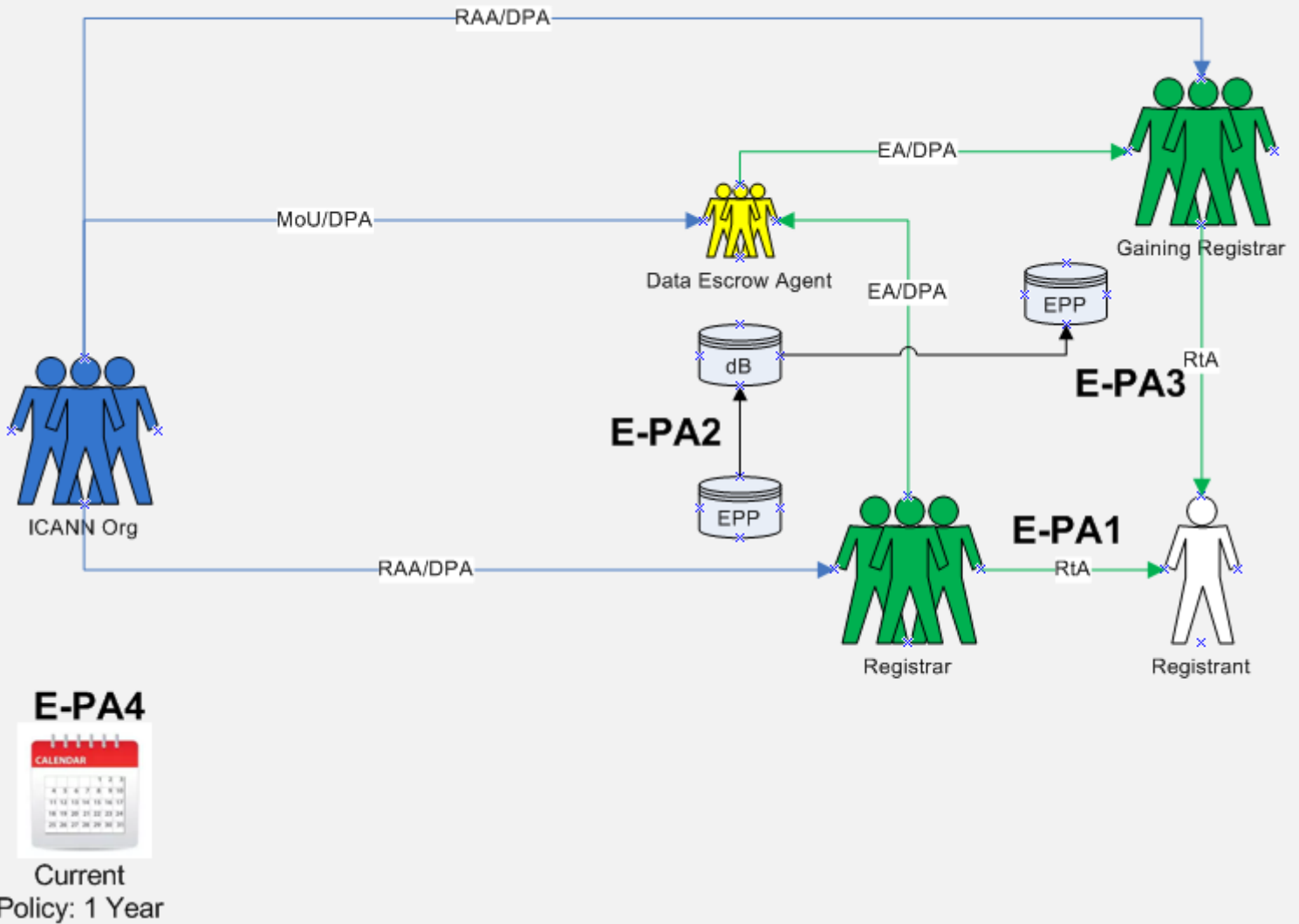
Processing Activity:	Responsible Party ⁶⁴ : (Charter Questions 3k, 3l, 3m)	Lawful Basis: (Is the processing necessary to achieve the purpose?)
<p>E-PA1: Collection of registration data for escrow</p> <p>(Charter Question 2b)</p>	<p>ICANN</p>	<p>6(1)(f)</p> <p>This Processing Activity of Collection is not required to be documented within the Purpose for Registrar Escrow because the processing activity for transmission of registration data to the Data Escrow Agent (as noted below) has already been collected or generated from other ICANN Purposes that also contain processing activities for the collection of registration data.</p> <p>However, the transparency of collection to the Registrant/Data Subject for the purpose of escrow is required. Refer to the Purpose for establishing the rights of the Registered Name Holder.</p>
<p>E-PA2: Transmission of registration data to Data Escrow Agent</p> <p>(Charter Questions 2c, 2d, 2e, 2i)</p>	<p>ICANN</p>	<p>This is a 6(1)(f) lawful basis because although there is likely a legitimate interest in providing 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, it is not technically necessary to transmit data to an escrow agent in order to allocate a string to</p>

⁶⁴ Note, the responsible party is not necessarily the party carrying out the processing activity

		<p>a registered name holder, and is therefore not necessary to perform the registration contract.</p>
<p>E-PA3: Disclosure of registration data to Gaining Registrar (Charter Questions 2f (gating questions), 2j)</p>	<p>ICANN</p>	<p>This is a 6(1)(f) lawful basis because although there is likely a legitimate interest in providing 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, it is not technically necessary to transmit data to an escrow agent in order to allocate a string to a registered name holder, and is therefore not necessary to perform the registration contract.</p> <p>Data is not made public for escrow purposes, but a transfer to the escrow agent and - in case of contingencies - the transfer to a Gaining Registrar is required to ensure that operations are not impaired.</p> <p>How and who ICANN chooses as the Gaining Registrar may have additional implications to the lawfulness should the Gaining Registrar not reside within the EU when the Losing Registrar did reside within the EU.</p>
<p>E-PA4: Retention of registration data by Data Escrow Agent (Charter Questions 2g)</p>	<p>ICANN</p>	<p>This is a 6(1)(f) lawful basis due to the connection of Retention with Transmission of registration data to the Data Escrow Agent from the Registry.</p> <p>From the Escrow Specification (3.3.1.6), deposits to Third-Party Escrow Agents two copies are held for one year.</p> <p>Questions about the validity of the one year for TPP, noting that no retention is listed for ICANN approved vendors, given that once a new deposit occurs and is verified, it renders prior deposits useless.</p> <p>The EPDP also discussed that perhaps some minimal retention could be necessary from an overall continuity perspective.⁶⁵</p>

⁶⁵ Refer to the preliminary recommendation on Retention of Purpose E-Ry. A retention change should be validated to ensure technical requirements are not jeopardized by lowering the retention duration.

Data Elements Map:



Data Elements Matrix:

"1" = Required "(1)" = Optional "-" = Not Required or Optional

Data Element	Collection E-PA1	Transmission E-PA2	Disclosure E-PA3	Retention E-PA4		
Domain Name	-	1	1	1		
Registry Domain ID	-	-	-	-		
Registrar Whois Server	-	-	-	-		
Registrar URL	-	-	-	-		
Updated Date	-	-	-	-		
Creation Date	-	-	-	-		
Registry Expiry Date	-	-	-	-		
Registrar Registration Expiration Date	-	1	1	1		

Data Element	Collection E-PA1	Transmission E-PA2	Disclosure E-PA3	Retention E-PA4		
Registrar	-	1	1	1		
Registrar IANA ID	-	-	-	-		
Registrar Abuse Contact Email	-	-	-	-		
Registrar Abuse Contact Phone	-	-	-	-		
Reseller	-	1	1	1		
Domain Status	-	-	-	-		
Registry Registrant ID	-	-	-	-		
Registrant Fields						
<input checked="" type="checkbox"/> Name	-	1	1	1		
<input checked="" type="checkbox"/> Organization (opt.)	-	-	-	-		
<input checked="" type="checkbox"/> Street	-	1	1	1		
<input checked="" type="checkbox"/> City	-	1	1	1		
<input checked="" type="checkbox"/> State/province	-	1	1	1		
<input checked="" type="checkbox"/> Postal code	-	1	1	1		
<input checked="" type="checkbox"/> Country	-	1	1	1		
<input checked="" type="checkbox"/> Phone	-	1	1	1		
<input checked="" type="checkbox"/> Phone ext (opt.)	-	-	-	-		
<input checked="" type="checkbox"/> Fax (opt.)	-	-	-	-		
<input checked="" type="checkbox"/> Fax ext (opt.)	-	-	-	-		
<input checked="" type="checkbox"/> Email	-	1	1	1		
2nd E-Mail address	-	-	-	-		
Admin ID	-	-	-	-		
Admin Fields						
<input checked="" type="checkbox"/> Name	-	-	-	-		
<input checked="" type="checkbox"/> Organization (opt.)	-	-	-	-		
<input checked="" type="checkbox"/> Street	-	-	-	-		
<input checked="" type="checkbox"/> City	-	-	-	-		
<input checked="" type="checkbox"/> State/province	-	-	-	-		
<input checked="" type="checkbox"/> Postal code	-	-	-	-		
<input checked="" type="checkbox"/> Country	-	-	-	-		
<input checked="" type="checkbox"/> Phone	-	-	-	-		
<input checked="" type="checkbox"/> Phone ext (opt.)	-	-	-	-		
<input checked="" type="checkbox"/> Fax (opt.)	-	-	-	-		
<input checked="" type="checkbox"/> Fax ext (opt.)	-	-	-	-		
<input checked="" type="checkbox"/> Email	-	-	-	-		
Tech ID	-	-	-	-		
Tech Fields						
<input checked="" type="checkbox"/> Name	-	-	-	-		
<input checked="" type="checkbox"/> Organization (opt.)	-	-	-	-		

Data Element	Collection E-PA1	Transmission E-PA2	Disclosure E-PA3	Retention E-PA4		
<input checked="" type="checkbox"/> Street	-	-	-	-		
<input checked="" type="checkbox"/> City	-	-	-	-		
<input checked="" type="checkbox"/> State/province	-	-	-	-		
<input checked="" type="checkbox"/> Postal code	-	-	-	-		
<input checked="" type="checkbox"/> Country	-	-	-	-		
<input checked="" type="checkbox"/> Phone	-	-	-	-		
<input checked="" type="checkbox"/> Phone ext (opt.)	-	-	-	-		
<input checked="" type="checkbox"/> Fax (opt.)	-	-	-	-		
<input checked="" type="checkbox"/> Fax ext (opt.)	-	-	-	-		
<input checked="" type="checkbox"/> Email	-	-	-	-		
NameServer(s)	-	-	-	-		
DNSSEC	-	-	-	-		
Name Server IP Address	-	-	-	-		
Last Update of Whois Database	-	-	-	-		

4

ICANN PURPOSE:**--For Registries Only--**

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

(also referenced by the EPDP Team as Purpose E-Ry)
(Purposes by Actor (E))(TempSpec - 4.4.11, Section 5.3, Appendix B)

Purpose Rationale:

1) If the purpose is based on an ICANN contract, cite the relevant section of the ICANN contracts that corresponds to the above purpose, if any.

- Registry EBERO Program - <https://www.icann.org/resources/pages/ebero-2013-04-02-en>
- Registry Data Escrow Specification: <https://newgtlds.icann.org/sites/default/files/agreements/agreement-approved-31jul17-en.html#specification2>
- Data Fields Sources:
 - <http://tools.ietf.org/html/draft-arias-noguchi-registry-data-escrow>
 - <https://tools.ietf.org/html/draft-arias-noguchi-dnrd-objects-mapping-09>

Escrowing the data is supported by ICANN's mandate to provide for security and stability in the DNS and this purpose is primarily protecting the registrant's rights. Escrow exists because Registrants have a reasonable expectation of business continuity.

It is reasonable to expect that a DPA would consider the escrow of customer data critical to the delivery of the service being provided to be common business practice and legal under GDPR provided appropriate contractual relationships are in place with the escrow agent to ensure that the data, once transferred to the escrow agent is afforded appropriate protection.

While technical and business resiliency could be achieved via other mechanisms, the escrow of data necessary to deliver the service is a generally accepted practice that is likely to be considered necessary to achieve the purpose of "...safeguarding registered name holder's registration data in the event of a business or technical failure, or other unavailability..."

While all contracted parties that have to be compliant with GDPR need to make sure there are protections against data loss and mechanisms to enable swift data recovery, ICANN is operating at the global level where customers can register domain names with registrars globally and the registry operators are based in numerous jurisdictions, it is important to have interoperability of escrow agents. Requiring all contracted parties to use the same policies for

both escrowing data and applying the same standards to escrow agents for making data available, is necessary for contingency planning at the global level.⁶⁶

Within the Temporary Specification, EBERO is mentioned as Processing Activity under Appendix C. The Charter Question, Part 2i, tasks the EPDP to consider if this Processing Activity should be eliminated or adjusted. Based on initial research of the EBERO process, Registry Escrow is invoked as a component of the overall process with no indication that registration data other than what is identified here is transferred within any of the other EBERO components. The EPDP concluded that documentation of EBERO can be satisfied within the processing activities defined for this purpose of Registry Escrow.

2) Is the purpose in violation with ICANN's bylaws?

No, providing a safety net for registrants in the event of registry technical or business failure seems within ICANN's remit.

1.1(a)(i) Coordinates the allocation and assignment of names in the root zone of the Domain Name System ("DNS") and coordinates the development and implementation of policies concerning the registration of second-level domain names in generic top-level domains ("gTLDs"). In this role, ICANN's scope is to coordinate the development and implementation of policies:

- For which uniform or coordinated resolution is reasonably necessary to facilitate the openness, interoperability, resilience, security and/or stability of the DNS including, with respect to gTLD registrars and registries, policies in the areas described in Annex G-1 and Annex G-2; and
- That are developed through a bottom-up consensus-based multistakeholder process and designed to ensure the stable and secure operation of the Internet's unique names systems.

The issues, policies, procedures, and principles addressed in Annex G-1 and Annex G-2 with respect to gTLD registrars and registries shall be deemed to be within ICANN's Mission.

3) Are there any "picket fence" considerations related to this purpose?

Only with respect to the data model(s) defined within RDDS/Whois consensus policies. Agreements between ICANN and Data Escrow Providers are not within scope of the picket fence.

⁶⁶ Draft Recommendation: Data processing agreements are necessary to ensure GDPR compliance. Recognizing that different escrow agreements exist depending on the TLD, the working group recommends that ICANN and/or the registry review the applicable escrow agreement and where necessary negotiate new GDPR compliant escrow agreements.

Lawfulness of Processing Test:

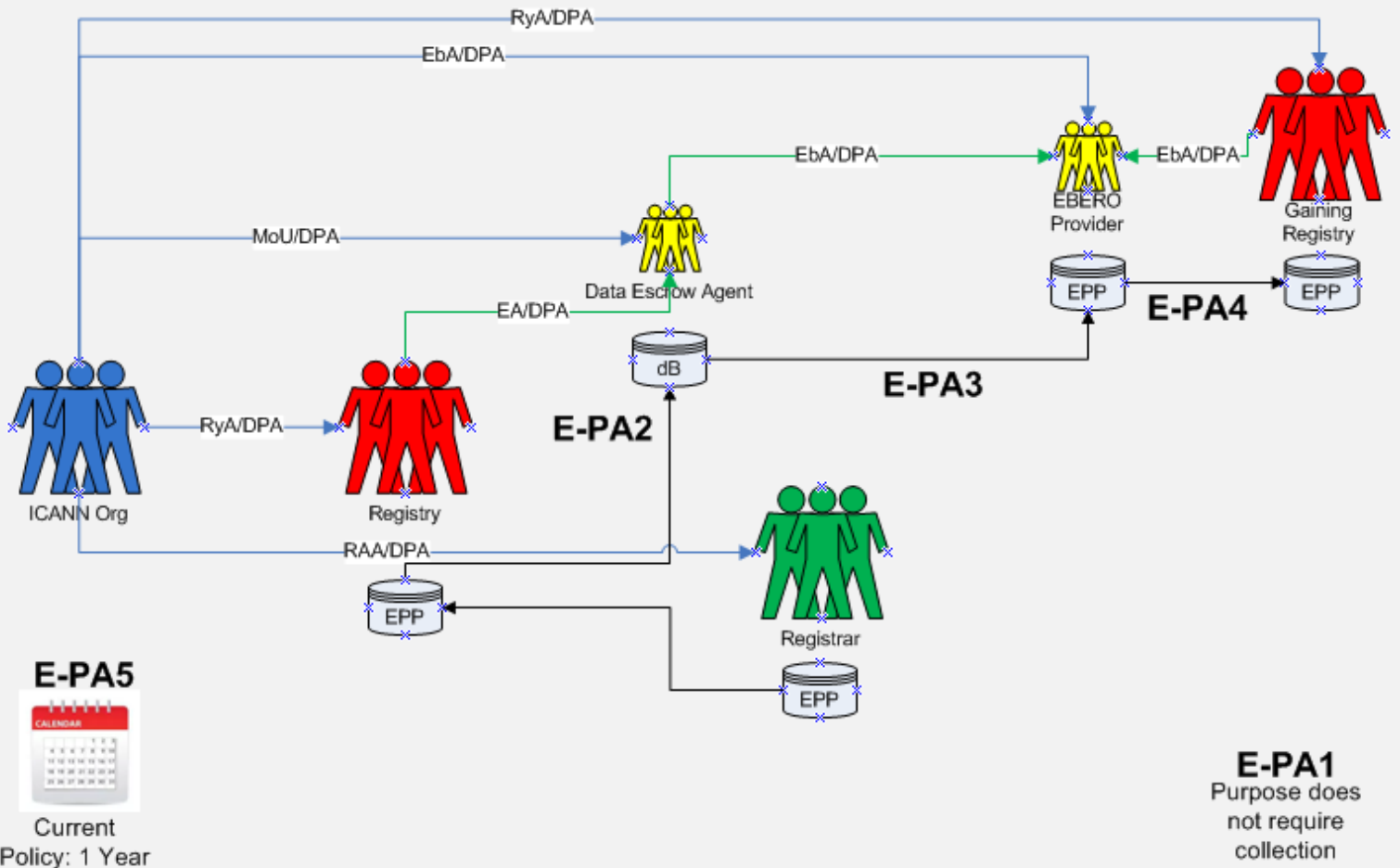
Processing Activity:	Responsible Party⁶⁷: (Charter Questions 3k, 3l, 3m)	Lawful Basis: (Is the processing necessary to achieve the purpose?)
<p>E-PA1: Collection of registration data for escrow (Charter Question 2b)</p>	<p>ICANN</p>	<p>6(1)(f) This Processing Activity of Collection is not required to be documented within the Purpose for Registry Escrow because the processing activity for transmission of registration data to the Data Escrow Agent (as noted below) has already been collected or generated from other ICANN Purposes that also contain Processing Activities for the transfer of registration data from the Registrar to the Registry. However, the transparency of collection to the Registrant/Data Subject for the purpose of escrow is required. Refer to the Purpose for establishing the rights of the Registered Name Holder.</p>
<p>E-PA2: Transmission of registration data to Data Escrow Agent (Charter Questions 2c, 2d, 2e, 2i)</p>	<p>ICANN</p>	<p>This is a 6(1)(f) lawful basis because although there is likely a legitimate interest in providing 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, it is not technically necessary to transmit data to an escrow agent in order to allocate a string to a registered name holder, and is therefore not necessary to perform the registration contract.</p>
<p>E-PA3: Disclosure of registration data to EBERO Provider (Charter Questions 2f (gating questions), 2j)</p>	<p>ICANN</p>	<p>This is a 6(1)(f) lawful basis because although there is likely a legitimate interest in providing 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, it is not technically necessary to transmit data to an escrow agent in order to allocate a string to a registered name holder, and is therefore not necessary to perform the registration contract. Specification 2, Part B "Legal Requirements", #6 under "Integrity and Confidentiality" stipulates how the release of a deposit is made. How and who ICANN chooses as the EBERO Provider may have additional implications to the lawfulness should the EBERO</p>

⁶⁷ Note, the responsible party is not necessarily the party carrying out the processing activity

		<p>Provider not reside within the EU when the Losing Registry did reside within the EU.</p>
<p>E-PA4: Disclosure of registration data to Gaining Registry (Charter Questions 2f (gating questions), 2j)</p>	<p>ICANN</p>	<p>This is a 6(1)(f) lawful basis because although there is likely a legitimate interest in providing 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, it is not technically necessary to transmit data to an escrow agent in order to allocate a string to a registered name holder, and is therefore not necessary to perform the registration contract.</p> <p>Specification 2, Part B “Legal Requirements”, #6 under “Integrity and Confidentiality” stipulates how the release of a deposit is made.</p>
<p>E-PA5: Retention of registration data by Data Escrow Agent (Charter Questions 2g)</p>	<p>ICANN</p>	<p>This is a 6(1)(f) lawful basis due to the connection between the Retention processing activity with that of the Transmission of registration data to the Data Escrow Agent from the Registry.</p> <p>Specification 2, Part B “Legal Requirements”, #4 under “Integrity and Confidentiality” stipulates “(iii) keep and safeguard each Deposit for one (1) year.”</p> <p>Once a full escrow deposit has been successfully received and validated by the escrow agent, any previous deposits are obsolete and of no value. In the event of differential deposits, a 1-week retention would be required. The working group recommends that a 1 month minimum retention period by the escrow agent be established to provide an additional buffer against technical failure by the escrow agent.⁶⁸</p>

⁶⁸ This preliminary recommendation should be validated to ensure technical requirements are not jeopardized by lowering the retention duration.

Data Elements Map:



Data Elements Matrix:

"1" = Required "(1)" = Optional "-" = Not Required or Optional

Data Element	Collection E-PA1	Transmission E-PA2	Disclosure E-PA3	Disclosure E-PA4	Retention E-PA5
Domain Name	-	1	1	1	1
Registry Domain ID	-	1	1	1	1
Registrar Whois Server	-	1	1	1	1
Registrar URL	-	1	1	1	1
Updated Date	-	1	1	1	1
Creation Date	-	1	1	1	1
Registry Expiry Date	-	1	1	1	1
Registrar Registration Expiration Date	-	1	1	1	1
Registrar	-	1	1	1	1
Registrar IANA ID	-	1	1	1	1
Registrar Abuse Contact Email	-	1	1	1	1

Data Element	Collection E-PA1	Transmission E-PA2	Disclosure E-PA3	Disclosure E-PA4	Retention E-PA5	
Registrar Abuse Contact Phone	-	1	1	1	1	
Reseller	-	1	1	1	1	
Domain Status	-	1	1	1	1	
Registry Registrant ID	-	1	1	1	1	
Registrant Fields						
<input checked="" type="checkbox"/> Name	-	1	1	1	1	
<input checked="" type="checkbox"/> Organization (opt.)	-	(1)	(1)	(1)	(1)	
<input checked="" type="checkbox"/> Street	-	1	1	1	1	
<input checked="" type="checkbox"/> City	-	1	1	1	1	
<input checked="" type="checkbox"/> State/province	-	1	1	1	1	
<input checked="" type="checkbox"/> Postal code	-	1	1	1	1	
<input checked="" type="checkbox"/> Country	-	1	1	1	1	
<input checked="" type="checkbox"/> Phone	-	1	1	1	1	
<input checked="" type="checkbox"/> Phone ext (opt.)	-	(1)	(1)	(1)	(1)	
<input checked="" type="checkbox"/> Fax (opt.)	-	(1)	(1)	(1)	(1)	
<input checked="" type="checkbox"/> Fax ext (opt.)	-	(1)	(1)	(1)	(1)	
<input checked="" type="checkbox"/> Email	-	1	1	1	1	
2nd E-Mail address	-	-	-	-	-	
Admin ID	-	-	-	-	-	
Admin Fields						
<input checked="" type="checkbox"/> Name	-	-	-	-	-	
<input checked="" type="checkbox"/> Organization (opt.)	-	-	-	-	-	
<input checked="" type="checkbox"/> Street	-	-	-	-	-	
<input checked="" type="checkbox"/> City	-	-	-	-	-	
<input checked="" type="checkbox"/> State/province	-	-	-	-	-	
<input checked="" type="checkbox"/> Postal code	-	-	-	-	-	
<input checked="" type="checkbox"/> Country	-	-	-	-	-	
<input checked="" type="checkbox"/> Phone	-	-	-	-	-	
<input checked="" type="checkbox"/> Phone ext (opt.)	-	-	-	-	-	
<input checked="" type="checkbox"/> Fax (opt.)	-	-	-	-	-	
<input checked="" type="checkbox"/> Fax ext (opt.)	-	-	-	-	-	
<input checked="" type="checkbox"/> Email	-	-	-	-	-	
Tech ID	-	-	-	-	-	
Tech Fields						
<input checked="" type="checkbox"/> Name	-	(1)	(1)	(1)	(1)	
<input checked="" type="checkbox"/> Organization (opt.)	-	-	-	-	-	
<input checked="" type="checkbox"/> Street	-	-	-	-	-	
<input checked="" type="checkbox"/> City	-	-	-	-	-	
<input checked="" type="checkbox"/> State/province	-	-	-	-	-	

Data Element	Collection E-PA1	Transmission E-PA2	Disclosure E-PA3	Disclosure E-PA4	Retention E-PA5	
<input checked="" type="checkbox"/> Postal code	-	-	-	-	-	
<input checked="" type="checkbox"/> Country	-	-	-	-	-	
<input checked="" type="checkbox"/> Phone	-	(1)	(1)	(1)	(1)	
<input checked="" type="checkbox"/> Phone ext (opt.)	-	-	-	-	-	
<input checked="" type="checkbox"/> Fax (opt.)	-	-	-	-	-	
<input checked="" type="checkbox"/> Fax ext (opt.)	-	-	-	-	-	
<input checked="" type="checkbox"/> Email	-	(1)	(1)	(1)	(1)	
NameServer(s)	-	1	1	1	1	
DNSSEC	-	1	1	1	1	
Name Server IP Address	-	1	1	1	1	
Last Update of Whois Database	-	1	1	1	1	

5

ICANN PURPOSE:

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

(also referenced by the EPDP Team as Purpose F)
(Purposes by Actor (F))(TempSpec - 4.4.13, 5.7, Appx C)

Purpose Rationale:

1) If the purpose is based on an ICANN contract, cite the relevant section of the ICANN contracts that corresponds to the above purpose, if any.

RA - <https://newgtlds.icann.org/sites/default/files/agreements/agreement-approved-31jul17-en.html>

Registry:

2.2 Compliance with Consensus Policies and Temporary Policies

2.11 Contractual and Operational Compliance Audits

Specification 4, 3.1 Periodic Access to Thin Registration Data

Specification 11 Public Interest Commitments

RAA - <https://www.icann.org/resources/pages/approved-with-specs-2013-09-17-en>

Registrar:

Registrar Obligations - 3.4.3, 3.7.7

3.15 Registrar Self-Assessment and Audits

4.1 Compliance with Consensus Policies and Temporary Policies

Data Retention Specification, 2.

If a contractual compliance complaint is filed, the complainant provides certain information regarding the issue, which may contain personal data. Depending on the nature of the issue, ICANN Compliance may ask the Registrar or Registry Operator for the minimum data needed to investigate the complaint. Compliance may also look at the public WHOIS to supplement its review or processing.

For ICANN Contractual Compliance audits, ICANN sends audit questionnaires to Registry Operators and Registrars. In responding to the questionnaire, the Registry Operator and Registrar could include personal data in its responses.

Also, as part of Registry Operator audits, ICANN Contractual Compliance requests escrowed data to cross-reference information between data escrow and zone file and bulk registration data access for a sample of 25 domain names to ensure consistency.

2) Is the purpose in violation with ICANN's bylaws?

No. Per ICANN's Mission, Section 1.1(a)(i):

"..In this role, ICANN's scope is to coordinate the development and implementation of policies:

....That are developed through a bottom-up consensus-based multistakeholder process and designed to ensure the stable and secure operation of the Internet's unique names systems.
 ..The issues, policies, procedures, and principles addressed in Annex G-1 and Annex G-2 with respect to gTLD registrars and registries shall be deemed to be within ICANN's Mission.”

3) Are there any “picket fence” considerations related to this purpose?

No. Registration Directory Services is within the “picket fence” as noted in ICANN Mission and Bylaws and contracts with ICANN to Registries and Registrars.

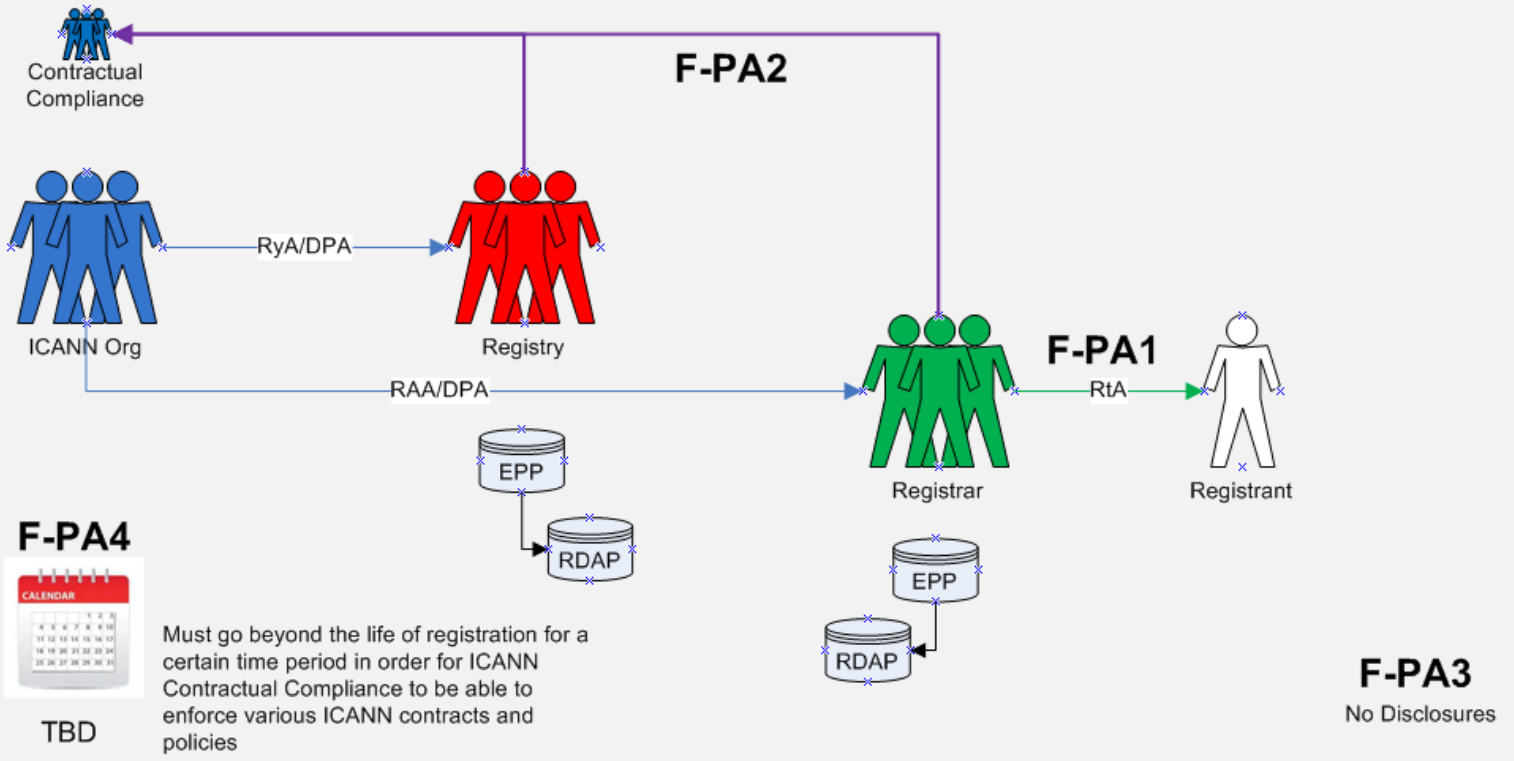
Lawfulness of Processing Test:

Processing Activity:	Responsible Party ⁶⁹ : (Charter Questions 3k, 3l, 3m)	Lawful Basis: (Is the processing necessary to achieve the purpose?)
<p>F-PA1: Collection of registration data for compliance with ICANN contracts (Charter Question 2b)</p>	<p>ICANN</p>	<p>This is a 6(1)(f) purpose because although there may be a legitimate interest in collecting registration data for ICANN org compliance to confirm compliance with the RAA/RA, this collection is not technically necessary to perform the registration contract.</p> <p>The BC and IPC disagree that Purpose F is a 6(1)(f) purpose. The Team tentatively agreed to the following: (a) 6(1)(f) is an appropriate legal basis for the compliance purpose; (b) Some (BC and IPC) believe Purpose F may be a 6(1)(b); (c) There are concerns 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.</p>
<p>F-PA2: Transmission of registration data to ICANN org compliance (Charter Questions 2c, 2d, 2e, 2i)</p>	<p>ICANN</p>	<p>This is a 6(1)(f) purpose because although there may be a legitimate interest in transmitting registration data to ICANN org compliance to confirm compliance with the RAA/RA, this transmission is not technically necessary to perform the registration contract.</p>
<p>F-PA3: Disclosure of registration data (Charter Questions 2f (gating questions), 2j)</p>	<p>N/A</p>	<p>N/A</p>

⁶⁹ Note, the responsible party is not necessarily the party carrying out the processing activity

<p>F-PA4: Retention of registration data by ICANN Compliance (Charter Questions 2g)</p>	<p>ICANN</p>	<p>Must go beyond the life of registration for a certain time period in order for ICANN Contractual Compliance to be able to enforce various ICANN contracts and policies.</p>
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Data Elements Map:



Data Elements Matrix:

"1" = Required "(1)" = Optional "-" = Not Required or Optional

Data Element	Collection F-PA1	Transmission F-PA2	Disclosure F-PA3	Retention F-PA4		
Domain Name	1	1	-	1		
Registry Domain ID	1	1	-	1		
Registrar Whois Server	1	1	-	1		
Registrar URL	1	1	-	1		
Updated Date	1	1	-	1		
Creation Date	1	1	-	1		
Registry Expiry Date	1	1	-	1		
Registrar Registration Expiration Date	1	1	-	1		
Registrar	1	1	-	1		

Data Element	Collection F-PA1	Transmission F-PA2	Disclosure F-PA3	Retention F-PA4		
Registrar IANA ID	1	1	-	1		
Registrar Abuse Contact Email	1	1	-	1		
Registrar Abuse Contact Phone	1	1	-	1		
Reseller	1	1	-	1		
Domain Status	1	1	-	1		
Registry Registrant ID	1	1	-	1		
Registrant Fields						
<input checked="" type="checkbox"/> Name	1	1	-	1		
<input checked="" type="checkbox"/> Organization (opt.)	(1)	(1)	-	(1)		
<input checked="" type="checkbox"/> Street	1	1	-	1		
<input checked="" type="checkbox"/> City	1	1	-	1		
<input checked="" type="checkbox"/> State/province	1	1	-	1		
<input checked="" type="checkbox"/> Postal code	1	1	-	1		
<input checked="" type="checkbox"/> Country	1	1	-	1		
<input checked="" type="checkbox"/> Phone	1	1	-	1		
<input checked="" type="checkbox"/> Phone ext (opt.)	(1)	(1)	-	(1)		
<input checked="" type="checkbox"/> Fax (opt.)	(1)	(1)	-	(1)		
<input checked="" type="checkbox"/> Fax ext (opt.)	(1)	(1)	-	(1)		
<input checked="" type="checkbox"/> Email	1	1	-	1		
2nd E-Mail address	-	-	-	-		
Admin ID	-	-	-	-		
Admin Fields ⁷⁰						
<input checked="" type="checkbox"/> Name	-	-	-	-		
<input checked="" type="checkbox"/> Organization (opt.)	-	-	-	-		
<input checked="" type="checkbox"/> Street	-	-	-	-		
<input checked="" type="checkbox"/> City	-	-	-	-		
<input checked="" type="checkbox"/> State/province	-	-	-	-		
<input checked="" type="checkbox"/> Postal code	-	-	-	-		
<input checked="" type="checkbox"/> Country	-	-	-	-		
<input checked="" type="checkbox"/> Phone	-	-	-	-		
<input checked="" type="checkbox"/> Phone ext (opt.)	-	-	-	-		
<input checked="" type="checkbox"/> Fax (opt.)	-	-	-	-		
<input checked="" type="checkbox"/> Fax ext (opt.)	-	-	-	-		
<input checked="" type="checkbox"/> Email	-	-	-	-		

⁷⁰ To be updated in line with what is decided for Purpose C – if this information is optional to provide, in those cases where it is provided, Compliance will need to be able to request those data fields if relevant for compliance requests.

Data Element	Collection F-PA1	Transmission F-PA2	Disclosure F-PA3	Retention F-PA4		
Tech ID	(1)	(1)	-	(1)		
Tech Fields ⁷¹						
<input type="checkbox"/> Name	(1)	(1)	-	(1)		
<input type="checkbox"/> Organization (opt.)	-	-	-	-		
<input type="checkbox"/> Street	-	-	-	-		
<input type="checkbox"/> City	-	-	-	-		
<input type="checkbox"/> State/province	-	-	-	-		
<input type="checkbox"/> Postal code	-	-	-	-		
<input type="checkbox"/> Country	-	-	-	-		
<input type="checkbox"/> Phone	(1)	(1)	-	(1)		
<input type="checkbox"/> Phone ext (opt.)	-	-	-	-		
<input type="checkbox"/> Fax (opt.)	-	-	-	-		
<input type="checkbox"/> Fax ext (opt.)	-	-	-	-		
<input type="checkbox"/> Email	(1)	(1)	-	(1)		
NameServer(s)	1	1	-	1		
DNSSEC	1	1	-	1		
Name Server IP Address	1	1	-	1		
Last Update of Whois Database	1	1	-	1		

⁷¹ Idem.

6

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.

(also referenced by the EPDP Team as Purpose M)
(Purposes by Actor (M))(TempSpec – URS-4.4.12, 5.6, Appx D; UDRP-Appx E)

Purpose Rationale:

1) If the purpose is based on an ICANN contract, cite the relevant section of the ICANN contracts that corresponds to the above purpose, if any.

- RAA - <https://www.icann.org/resources/pages/approved-with-specs-2013-09-17-en>
 - Section 3.8
- RyA - <https://newgtlds.icann.org/sites/default/files/agreements/agreement-approved-31jul17-en.html>
 - Specification 7

ICANN Org to provide EPDP Team with copy of agreements with UDRP/URS providers in relation to data protection / transfer of data⁷² as well as the relevant data protection policies that dispute resolution providers have in place.

Rights Protection Mechanisms (RPMs) provisions exist within both the Registry and Registrar agreements as connected to ICANN Bylaws. This purpose is connected to Rights Protection Mechanisms of Uniform Dispute Resolution Mechanism (UDRP) and Uniform Rapid Suspension (URS), but it does not preclude RPMs that could be created or modified in the future.

RRDRP and PDDRP RPMs were also considered whether they should be connected to this purpose. While there was not agreement as to whether these RPMs involve registration data, they have been included in this workbook for purposes of the Initial Report.

2) Is the purpose in violation with ICANN's bylaws?

No.

ICANN bylaws, Section 1.1(a)(i), as a part of “Mission” refer to Annexes G1 and G2. Annex G-1 contains a provision for Registrars, “resolution of disputes regarding the registration of domain names (as opposed to the use of such domain names, but including where such policies take into account use of the domain names)” Annex G-2 also

⁷² Draft Recommendation: Data processing agreements are necessary to ensure GDPR compliance. Recognizing that different agreements exist depending on the TLD, the working group recommends that ICANN and the RPM providers review the applicable agreement and where necessary negotiate new GDPR compliant data processing agreements.

contains, “resolution of disputes regarding the registration of domain names (as opposed to the use of such domain names)”.

3) Are there any “picket fence” considerations related to this purpose?

Resolution of disputes regarding or relating to the registration of domain names (as opposed to the use of such domain names) are considered within the picket fence for the development of consensus policies. The purpose and the processing hereunder, as specified by the collection, transmission and disclosure of the data elements identified, are considered within the picket fence based upon the coordination, operationalization and facilitation of the dispute resolution mechanisms listed. The Temp Spec (Appendix D & E) now makes reference to who an RPM provider must contact based on Thick or Thin RDS to obtain registration data for the complaint.

Lawfulness of Processing Test:

Processing Activity:	Responsible Party ⁷³ : (Charter Questions 3k, 3l, 3m)	Lawful Basis: (Is the processing necessary to achieve the purpose?)
<p>M-PA1: Collection of registration data to implement the UDRP and URS</p> <p>(Charter Question 2b)</p>	<p>ICANN Registrars</p>	<p>This is a 6(1)(b) purpose because it is necessary to collect registration data in order to facilitate/implement a UDRP or URS decision. For example, in the case of a UDRP/URS proceeding, the Registrant must agree to be bound by the UDRP/URS in order to register a domain name, so the collection of data for this purpose is necessary to fulfill the registration agreement.</p>
	<p>ICANN Registries</p>	<p>This is a 6(1)(f) purpose because ICANN and Registries do not have a direct contract with the registrant. The Registry must process data to fulfill its obligations regarding the RPMs, compliance with which are incorporated into the Registry Agreement.</p> <p>Under Article 6(1)(f) with regard to the URS and UDRP for registries and ICANN, because the processing is necessary for the purposes of pursued legitimate interests that are not overridden by the interests or fundamental rights and freedoms of the data subject.⁷⁴ With regard to this balancing test, we note that the contacts are important to ensure due process for the registrant so that they have notice of the proceedings and can avoid losing their domain name through a default.</p>

⁷³ Note, the responsible party is not necessarily the party carrying out the processing activity

⁷⁴ Certain registrant contact information may be needed (e.g., in the UDRP context) for due process purposes in the registrant’s benefit.

<p>M-PA2: Collection of registration data to implement the RDDR and PDDR</p>	<p>ICANN Registries Registrars</p>	<p>This is a 6(1)(f) with regard to the RDDR and PDDR for registrars, registries, and ICANN, because the processing is necessary for the purposes of pursued legitimate interests that are not overridden by the interests or fundamental rights and freedoms of the data subject.</p>
<p>M-PA3: Transmission of registration data from Registrar to Registry</p> <p>(Charter Questions 2c, 2d, 2e, 2i)</p>	<p>ICANN Registrars</p>	<p>This is a 6(1)(b) purpose because transmission of (at least minimal) registration data from the Registrar to the Registry is necessary to identify the Registrant for purposes of dispute resolution.</p>
	<p>ICANN Registries</p>	<p>This is a 6(1)(f) purpose because although there is a legitimate interest in transmitting registration data to the Registry, this transmission is not technically necessary to perform the registration contract. The Registry must process data to fulfill its obligations regarding the RPMs and DRPs, compliance with which are incorporated into the Registry Agreement.</p>
<p>M-PA4: Transmission of registration data to dispute resolution provider to administer the UDRP, URS, RDDR, and PDDR</p> <p>(Charter Questions 2c, 2d, 2e, 2i)</p>	<p>ICANN Registries Registrars Dispute Resolution Provider – Processor or independent controller</p>	<p>6(1)(b) for Registrars 6(1)(f) for Registries and ICANN</p> <p>This is a 6(1)(f) purpose because although there may be a legitimate interest in transmitting registration data to Dispute Resolution Providers, this transmission is not technically necessary to perform the registration contract.</p>
<p>M-PA5: Disclosure of registration data used for complaints on dispute provider sites</p> <p>(Charter Questions 2f (gating questions), 2j)</p>	<p>Dispute Resolution Provider – Processor or independent controller</p>	<p>TBD</p>
<p>M-PA6: Retention of registration data used for complaints</p>	<p>TBD</p>	<p>TBD</p> <p>The EPDP Team is not aware of any currently data retention requirements by dispute resolution providers.⁷⁵⁷⁶</p>

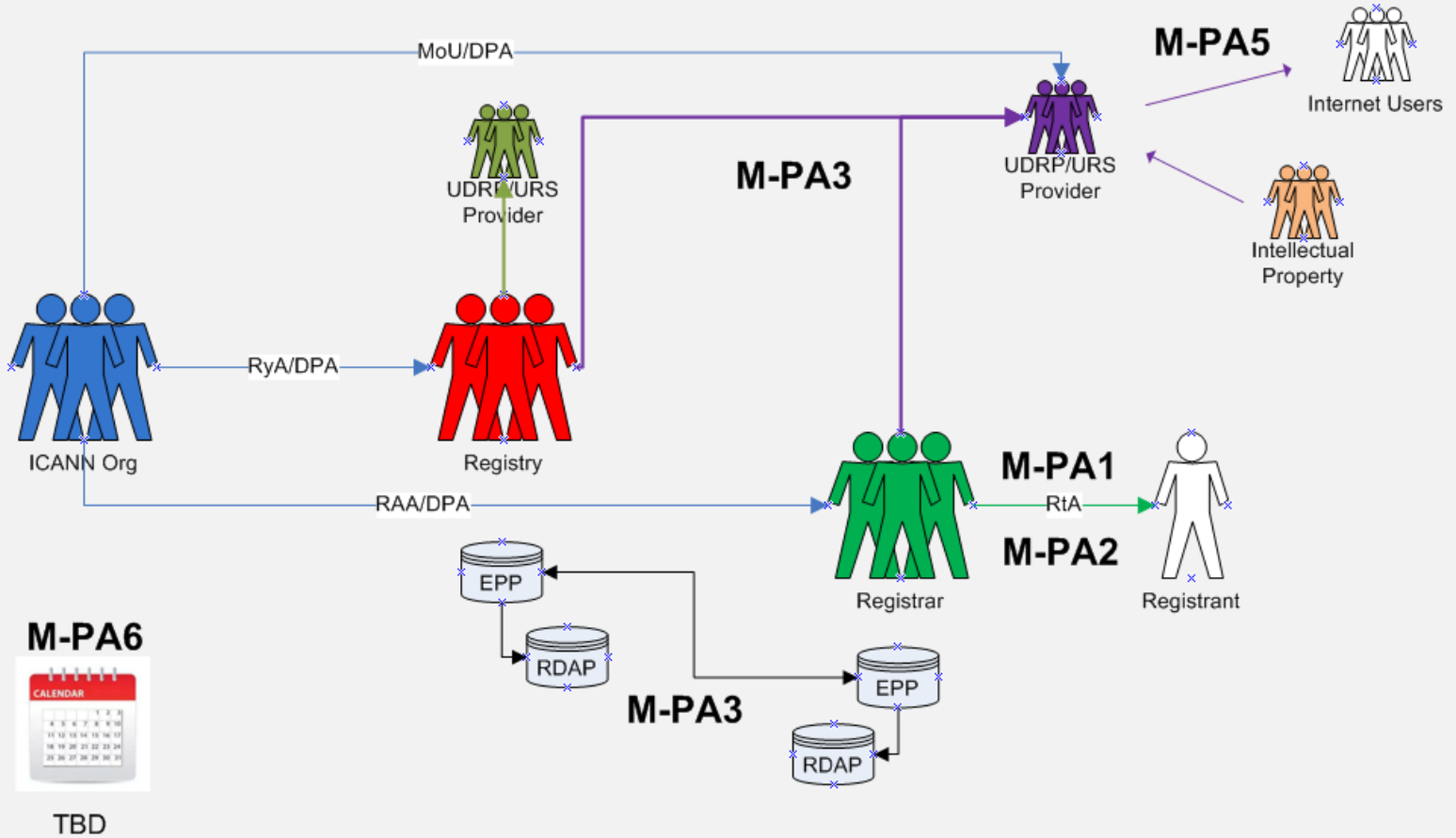
⁷⁵ Proposed Policy Recommendation: ICANN Org should enter into data processing agreements with Dispute Resolution Providers in which the data retention period is addressed, considering the interest in having publicly available decisions.

⁷⁶ WIPO’s GDPR FAQ: Paragraph 4(j) of the UDRP mandates that “[a]ll decisions under this Policy will be published in full over the Internet, except when an Administrative Panel determines in an exceptional case to redact portions of its decision.” In this respect, through their acceptance of the applicable registration terms and conditions, domain name registrants subject to a UDRP proceeding are bound by this provision as well as the other UDRP terms. Publication of party names in UDRP decisions is essential to the overall functioning of the UDRP in that it helps to explain the panel’s findings, supports

(Charter Questions 2g)

Data retention requirement for registrars should be uniform with other requirements.

Data Elements Map:



Data Elements Matrix:

“1” = Required “(1)” = Optional “-” = Not Required or Optional

Data Element	Collection M-PA1	Collection M-PA2	Transmission M-PA3	Transmission M-PA4	Disclosure M-PA5	Retention M-PA6
Domain Name	1	1	1	1	1	-
Registry Domain ID	-	-	-	-	-	-
Registrar Whois Server	1	1	1	1	-	-

jurisprudential consistency, facilitates the conduct of other cases as appropriate, and furthermore can provide a deterrent effect. Against the background of the above-mentioned purposes, any request to redact a party’s name from a decision should normally be submitted for the panel’s consideration during the UDRP proceeding. Also in light of the above-mentioned reasons for full decision publication, any such request should be appropriately motivated.

Data Element	Collection M-PA1	Collection M-PA2	Transmission M-PA3	Transmission M-PA4	Disclosure M-PA5	Retention M-PA6
Registrar URL	1	1	1	1	-	-
Updated Date	1	1	1	1	-	-
Creation Date	1	1	1	1	-	-
Registry Expiry Date	1	1	1	1	-	-
Registrar Registration Expiration Date	1	1	1	1	-	-
Registrar	1	1	1	1	1	-
Registrar IANA ID	1	1	1	1	-	-
Registrar Abuse Contact Email	1	1	1	1	-	-
Registrar Abuse Contact Phone	1	1	1	1	-	-
Reseller	1	1	1	1	-	-
Domain Status	1	1	1	1	-	-
Registry Registrant ID	-	-	-	-	-	-
Registrant Fields						
<input checked="" type="checkbox"/> Name	1	1	1	1	1	-
<input checked="" type="checkbox"/> Organization (opt.)	(1)	(1)	(1)	(1)	1	-
<input checked="" type="checkbox"/> Street	1	1	1	1	-	-
<input checked="" type="checkbox"/> City	1	1	1	1	1	-
<input checked="" type="checkbox"/> State/province	1	1	1	1	1	-
<input checked="" type="checkbox"/> Postal code	1	1	1	1	-	-
<input checked="" type="checkbox"/> Country	1	1	1	1	1	-
<input checked="" type="checkbox"/> Phone	(1)	(1)	(1)	(1)	-	-
<input checked="" type="checkbox"/> Phone ext (opt.)	(1)	(1)	(1)	(1)	-	-
<input checked="" type="checkbox"/> Fax (opt.)	(1)	(1)	(1)	(1)	-	-
<input checked="" type="checkbox"/> Fax ext (opt.)	(1)	(1)	(1)	(1)	-	-
<input checked="" type="checkbox"/> Email	1	1	1	1	-	-
2nd E-Mail address	-	-	-	-	-	-
Admin ID	-	-	-	-	-	-
Admin Fields						
<input checked="" type="checkbox"/> Name	-	-	-	-	-	-
<input checked="" type="checkbox"/> Organization (opt.)	-	-	-	-	-	-
<input checked="" type="checkbox"/> Street	-	-	-	-	-	-
<input checked="" type="checkbox"/> City	-	-	-	-	-	-
<input checked="" type="checkbox"/> State/province	-	-	-	-	-	-
<input checked="" type="checkbox"/> Postal code	-	-	-	-	-	-
<input checked="" type="checkbox"/> Country	-	-	-	-	-	-
<input checked="" type="checkbox"/> Phone	-	-	-	-	-	-
<input checked="" type="checkbox"/> Phone ext (opt.)	-	-	-	-	-	-
<input checked="" type="checkbox"/> Fax (opt.)	-	-	-	-	-	-
<input checked="" type="checkbox"/> Fax ext (opt.)	-	-	-	-	-	-

Data Element	Collection M-PA1	Collection M-PA2	Transmission M-PA3	Transmission M-PA4	Disclosure M-PA5	Retention M-PA6
<input checked="" type="checkbox"/> Email	-	-	-	-	-	-
Tech ID	-	-	-	-	-	-
Tech Fields						
<input checked="" type="checkbox"/> Name	-	-	-	-	-	-
<input checked="" type="checkbox"/> Organization (opt.)	-	-	-	-	-	-
<input checked="" type="checkbox"/> Street	-	-	-	-	-	-
<input checked="" type="checkbox"/> City	-	-	-	-	-	-
<input checked="" type="checkbox"/> State/province	-	-	-	-	-	-
<input checked="" type="checkbox"/> Postal code	-	-	-	-	-	-
<input checked="" type="checkbox"/> Country	-	-	-	-	-	-
<input checked="" type="checkbox"/> Phone	-	-	-	-	-	-
<input checked="" type="checkbox"/> Phone ext (opt.)	-	-	-	-	-	-
<input checked="" type="checkbox"/> Fax (opt.)	-	-	-	-	-	-
<input checked="" type="checkbox"/> Fax ext (opt.)	-	-	-	-	-	-
<input checked="" type="checkbox"/> Email	-	-	-	-	-	-
NameServer(s)	-	-	-	-	-	-
DNSSEC	-	-	-	-	-	-
Name Server IP Address	-	-	-	-	-	-
Last Update of Whois Database	-	-	-	-	-	-

7

REGISTRY PURPOSE:

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

(also referenced by the EPDP Team as Purpose N)

(Purposes by Actor (N))(TempSpec – N/A)

Purpose Rationale:

1) If the purpose is based on an ICANN contract, is this lawful as tested against GDPR and other laws?

Yes. Registry Agreement allows Registry Operators to establish, publish, and adhere to clear registration policies (e.g., Spec. 11, 3(d); Spec. 12; Spec. 13). See also ICANN Bylaws (Art. 1.1(a)(i) and Annex G-2).

Enabling validation to confirm that Registered Name Holder meets registration policy eligibility criteria introduces innovation and differentiation in the gTLD space.

2) Is the purpose in violation with ICANN's bylaws?

No. This purpose is consistent with ICANN’s Mission of coordinating the development and implementation of policies concerning the registration of second-level domain names in gTLDs (Introduction of New gTLDs and Applicant Guidebook), and principles for allocation of registered names in a TLD (Annex G-2)

3) Are there any “picket fence” considerations related to this purpose?

Within picket fence.

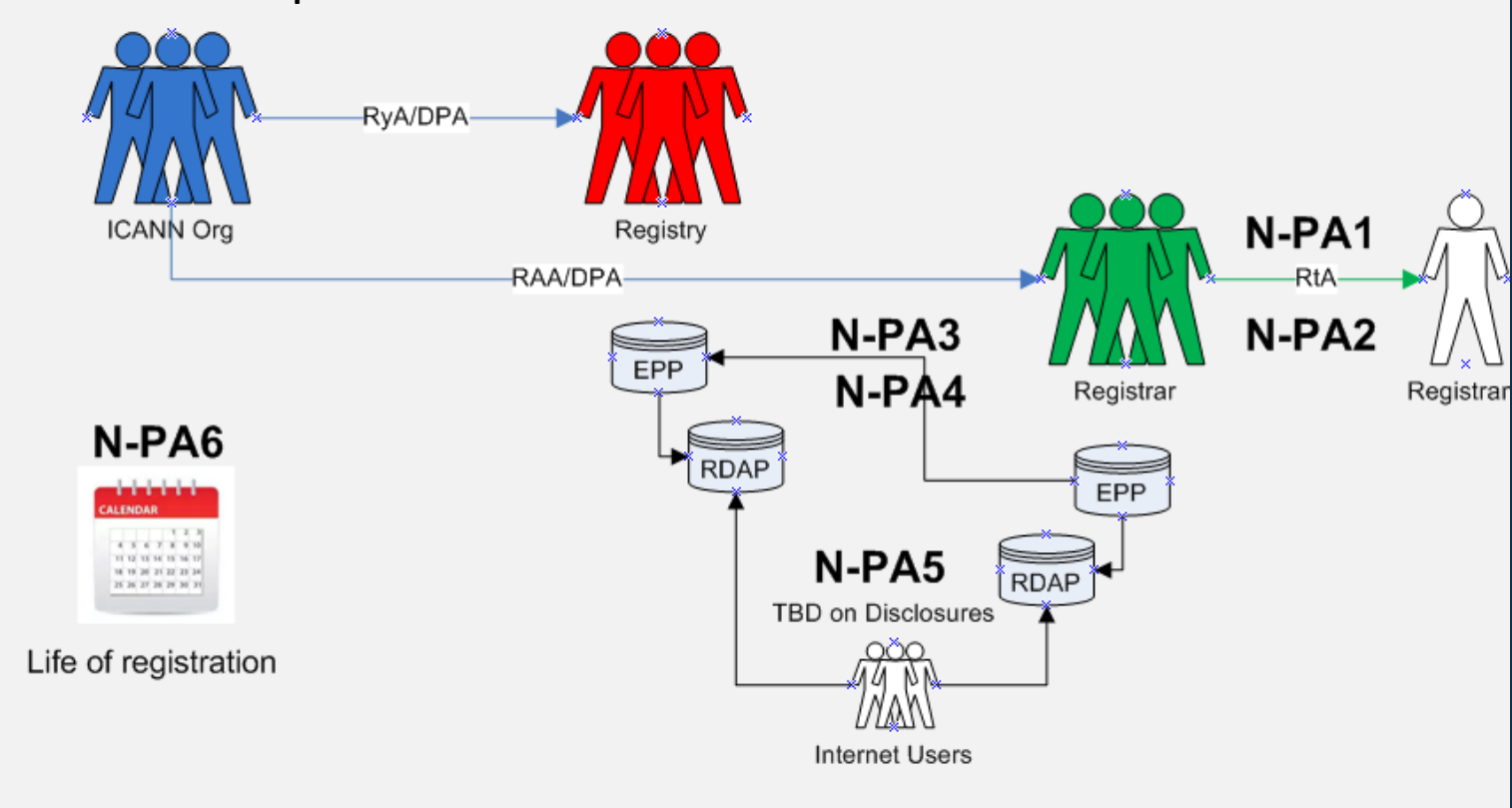
Lawfulness of Processing Test:

Processing Activity:	Responsible Party⁷⁷: (Charter Questions 3k, 3l, 3m)	Lawful Basis: (Is the processing necessary to achieve the purpose?)
N-PA1: Collecting specific data for Registry Agreement-mandated eligibility requirements (Charter Question 2b)	Registries	6(1)(b) (for ICANN, registrars- or Registry-mandated eligibility requirements) because it is necessary to collect specific Registrant data to confirm the registrant meets the specific requirements of the registration agreement, i.e., registrar needs to verify the registrant is a licensed attorney to register a .abogado domain name. 6(1)(f) for Registries, which are not parties to the registration agreement, but process the data in accordance with the obligations under the Registry-Registrar Agreement to allocate and activate domain names for registered name holders that meet the registration policy eligibility requirements
N-PA2: Collecting specific data for Registry Operator-adopted eligibility requirements	Registries	6(1)(b) for Registrars because it is necessary to collect specific registrant data to confirm the registrant meets the specific requirements of the registration agreement, i.e., registrar needs to verify the registrant is a licensed attorney to register a .abogado domain name

⁷⁷ Note, the responsible party is not necessarily the party carrying out the processing activity

(Charter Question 2b)		6(1)(f) for Registries, which are not parties to the registration agreement, but process the data in accordance with the obligations under the Registry-Registrar Agreement to allocate and activate domain names for Registered Name Holders that meet the registration policy eligibility requirements
<p>N-PA3: Transfer of registration data from registrar to registry</p> <p>(Charter Questions 2c, 2d, 2e, 2i)</p>	<p>RA-mandated eligibility requirements</p> <p>Registries</p>	<p>6(1)(b) for Registrars because transfer from Registrar to Registry of registration data elements that demonstrate satisfaction of registration policy eligibility criteria is necessary so that the registry may validate satisfaction of eligibility criteria, and comply with ICANN audit requests.</p> <p>6(1)(f) for Registries. The transfer is necessary so that the Registry may validate satisfaction of eligibility criteria and comply with ICANN audit requests.</p>
<p>N-PA4: Transfer of registration data from registrar to registry</p> <p>(Charter Questions 2c, 2d, 2e, 2i)</p>	<p>Registry-adopted eligibility requirements</p> <p>Registries</p>	<p>6(1)(b) for registrars because transfer from registrar to registry of registration data elements that demonstrate satisfaction of registration policy eligibility criteria is necessary so that the registry may validate satisfaction of eligibility criteria.</p> <p>6(1)(f) for registries. The transfer is necessary so that the registry may validate satisfaction of eligibility criteria and comply with ICANN audit requests.</p>
<p>N-PA5: Disclosure of ...</p> <p>(Charter Questions 2f (gating questions), 2j)</p>	<p>Registries</p>	<p>N/A</p>
<p>N-PA6: Retention of</p> <p>(Charter Questions 2g, ??)</p>	<p>Registries</p>	<p>6(1)(f)</p> <p>Life of registration.</p>

Data Elements Map:



Data Elements Matrix:

"1" = Required "(1)" = Optional "-" = Not Required or Optional

Data Element	Collection N-PA1	Collection N-PA2	Transmissio n N-PA3	Transmissio n N-PA4	Disclosure N-PA5	Retention N-PA6
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 (opt.)	-	-	-	-	-	-
· Street	-	-	-	-	-	-
· City	-	-	-	-	-	-
· State/province	-	-	-	-	-	-
· Postal code	-	-	-	-	-	-
· Country	-	-	-	-	-	-
· Phone	-	-	-	-	-	-
· Phone ext (opt.)	-	-	-	-	-	-
· Fax (opt.)	-	-	-	-	-	-
· Fax ext (opt.)	-	-	-	-	-	-
· Email	-	-	-	-	-	-
2nd E-Mail address	-	-	-	-	-	-
Admin ID	-	-	-	-	-	-
Admin Fields						
· Name	-	-	-	-	-	-
· Organization (opt.)	-	-	-	-	-	-
· Street	-	-	-	-	-	-
· City	-	-	-	-	-	-
· State/province	-	-	-	-	-	-
· Postal code	-	-	-	-	-	-
· Country	-	-	-	-	-	-
· Phone	-	-	-	-	-	-
· Phone ext (opt.)	-	-	-	-	-	-
· Fax (opt.)	-	-	-	-	-	-
· Fax ext (opt.)	-	-	-	-	-	-
· Email	-	-	-	-	-	-
Tech ID	-	-	-	-	-	-
Tech Fields						
· Name	-	-	-	-	-	-
· Organization (opt.)	-	-	-	-	-	-
· Street	-	-	-	-	-	-
· City	-	-	-	-	-	-
· State/province	-	-	-	-	-	-
· Postal code	-	-	-	-	-	-
· Country	-	-	-	-	-	-
· Phone	-	-	-	-	-	-
· Phone ext (opt.)	-	-	-	-	-	-
· Fax (opt.)	-	-	-	-	-	-
· Fax ext (opt.)	-	-	-	-	-	-

Email	-	-	-	-	-	-
NameServer(s)	-	-	-	-	-	-
DNSSEC	-	-	-	-	-	-
Name Server IP Address	-	-	-	-	-	-
Last Update of Whois Database	-	-	-	-	-	-
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)	(1)	(1)	(1)	(1)