Website Agenda
17 May 2017
Special Meeting of the ICANN Board

Main Agenda

- Initiating Consideration of Temporary Specification for gTLD Registration Data
- AOB

Directors and Liaisons,

Attached below please find Notice of date and time for a Special Meeting of the ICANN Board.

17 May 2018 – Special Meeting of the ICANN Board of Directors - at 18:00 UTC. This Board meeting is estimated to last approximately 60 minutes.

https://www.timeanddate.com/worldclock/fixedtime.html?iso=20180517T1800

Some other time zones:

17 May 2018 – 11:00am PDT Los Angeles

17 May 2018 – 2:00pm EDT Washington, D.C.

17 May 2018 – 8:00pm CEST Brussels

18 May 2018 – 3:00am JST Tokyo

SPECIAL MEETING OF THE ICANN BOARD

Main Agenda

- Initiating Consideration of Temporary Specification for gTLD Registration Data
- AOB

MATERIALS – You can access the Board Meeting materials, when available, in Google Drive here:

Contact Information Redacted

If you have trouble with access, please let us know and we will work with you to assure that you get access to the documents.

If call information is required, it will be distributed separately.

If you have any questions, or we can be of assistance to you, please let us know.

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Advisory Statement: Temporary Specification for gTLD Registration Data
Draft as of 16 May 2018

On ▓▓▓ May 2018, the ICANN Bo   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.[1] The Temporary Specification provides modifications to existing requirements in the Registrar Accreditation and Registry Agreements to bring them into compliance with the European Union's General Data Protection Regulation (GDPR). Absent these modifications, ICANN, Registry Operators, and Registrars would not be able to comply with both the law and ICANN agreements when the GDPR goes into effect on 25 May 2018. This would result in the inability of ICANN to enforce its contracts. This would also result in each Registry Operator and Registrar making their own determination regarding what gTLD Registration Data should be collected, transferred and published, leading to a fragmentation of the globally distributed WHOIS system. Fragmentation of the WHOIS system would jeopardize the availability of Registration Data, which is essential to ensuring the security and stability of the Internet, including to mitigate attacks that threaten the stable and secure operation of the Internet. As such, the Temporary Specification is needed prior to 25 May 2018 to preserve the security and stability of registry services, registrar services, and of the Domain Name System (DNS).

ICANN's role in providing the technical coordination of the globally distributed WHOIS system is a unique matter, including the public interest nature of WHOIS. For all the reasons put forth in this Advisory, the Temporary Specification should receive consensus support from the community to ensure the ongoing stability and security of the Internet, the globally distributed WHOIS system, and other processing of gTLD Registration Data, and consideration should be given to include the elements of the Temporary Specification in a consensus policy development process.

Impact of the Temporary Specification

When the Temporary Specification goes into effect on 25 May 2018, the WHOIS system will remain available, though there will be some changes. Registry Operators and Registrars are still required to collect all information. However, if you submit a WHOIS query, you will only receive "Thin" data in return, which includes only technical data sufficient to identify the sponsoring Registrar, status of the registration, and creation and expiration dates for each registration, but not personal data.

If you are a third party with legitimate interests in gaining access to the non-public data held by the Registry Operator or Registrar, there are still ways for you to access that data. You can look up the sponsoring Registrar and contact them, and they are obligated to respond to you in a reasonable time. If you do not get a response, ICANN will have a complaint mechanism available to you. If you find individual parties who you believe are not complying with their obligations under these temporary

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[1] See Specification 1 of the Registry Agreement and the Consensus and Temporary Policies Specification of the 2013 Registrar Accreditation Agreement.

specifications or their agreements with ICANN, you may contact ICANN's Contractual Compliance Department to file a complaint.

Advisory Analysis

1. Preserving gTLD Registration Data and the globally distributed WHOIS system in the context of security and stability

    1.1. The WHOIS system was originally put in place so that in the event of network problems such as outages, problems with hardware or software, or other issues, a small network of researchers connected on the ARPANET could contact each other to resolve the issue.[2]

    1.2. Today, the WHOIS system provides a mechanism that allows Internet users to make contact with the end points of Internet communication, namely domain names and Internet addresses. In cases of attack or abuse that threaten the stable and secure operation of the Internet, timely availability of contact information is often the first step to mitigate the attacks.

    1.3. The stable operation of the Internet relies on the basic concept that you cannot run a hierarchical and decentralized system like the Internet (a network of networks) if you cannot find the people who operate it to warn of problems and coordinate responses to operational issues.

    1.4. In addition, the WHOIS system helps serve the public interest as it contributes to the security and stability of the Internet by providing contact information to support issues related to consumer protection, investigation of cybercrime, DNS abuse and intellectual property; as well as to address appropriate law enforcement needs.

    1.5. Throughout this time, including throughout ICANN's history, the WHOIS system has been an important part of ICANN's mission and mandate, and responsibilities relating to the WHOIS system are encapsulated in ICANN's Bylaws.

    1.6. Article 1, section 1.1(a) of ICANN's Bylaws specifies that ICANN's mission is: "[…] to ensure the stable and secure operation of the Internet's unique identifier systems […]".

    1.7. Article 1, section 1.2(a) of ICANN's Bylaws notes "ICANN must operate in a manner consistent with these Bylaws for the benefit of the Internet community as a whole […]". In this regard, ICANN's mission and mandate specifically requires ICANN to take into account the interests of others – not just ICANN organization. In line with this requirement for ICANN to act in the public interest:

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[2] https://www.icann.org/en/system/files/files/whois-high-level-technical-brief-20apr18-en.pdf

1.7.1. The Bylaws in Article 4, section 4.6(e)(ii) require ICANN to undertake a periodic review of WHOIS. This review must take into account whether WHOIS is meeting the legitimate needs of others.

1.7.2. The Bylaws in Article 4, section 4.6 (d) specifically obligates ICANN to "adequately address issues of competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns, and rights protection" prior to authorizing an increase in the number of gTLDs in the root zone.

1.8. ICANN's mission and mandate, as stated in ICANN's Bylaws, has led to WHOIS obligations encapsulated in ICANN consensus policies and agreements that ICANN has with Registry Operators and Registrars.

1.9. These policies and contractual obligations set the minimum requirements governing the collection, retention, escrow, transfer, and display of Registration Data, which includes contact information of the registrant, administrative and technical contacts as well as technical information associated with a domain name. Each individual Registry Operator and Registrar maintains its own database of Registration Data, and operates its own registration directory service that currently provides open, public access to Registration Data to mitigate attacks that threaten the stable and secure operation of the Internet and to serve the public service uses identified above.

1.10. The GDPR imposes new obligations that would make it impossible for ICANN, Registry Operators, and Registrars to continue to comply with ICANN agreements and the law when the GDPR goes into effect on 25 My 2018.

1.11. This would result in the inability of ICANN to enforce its contracts. This would also result in each Registry Operator and Registrar making their own determination regarding what gTLD Registration Data should be collected, transferred and published, leading to a fragmentation of the globally distributed WHOIS system. Fragmentation of the WHOIS system would jeopardize the availability of Registration Data, which is essential to ensuring the security and stability of the Internet, including to mitigate attacks that threaten the stable and secure operation of the Internet.

1.12. To allow ICANN, Registry Operators, and Registrars to comply with the law while ensuring continued availability of Registration Data to the greatest extent possible and avoid fragmentation of the WHOIS system, the Temporary Specification will provide a single, uniform framework for ICANN, Registry Operators, and Registrar regarding Registration Data directory services.

2. Steps ICANN has taken to build consensus support of Internet stakeholders

2.1. ICANN has been engaging with Internet stakeholders over the past year to analyze and discuss the impact of the GDPR on how Registration Data is collected, processed and published, including potential changes to bring them into compliance with the GDPR. In June 2017, following discussions with the community, ICANN asked contracted parties and interested stakeholders to identify user types and purposes of data elements required by ICANN policies and contracts. The individual responses received were compiled in a gTLD Registration Data Flow Matrix, which was used to inform further legal analyses and help develop the purposes of processing gTLD registration data.[3]

2.2. ICANN solicited community input on its process for identifying an interim compliance model via two webinars and multiple sessions at ICANN meetings, in addition to regular dialogues with stakeholders, public community sessions at the ICANN meetings, and ongoing input received through gdpr@icann.org.[4] A webinar in October 2017 provided the community with an overview of ICANN's approach to complying with the GDPR. A second webinar in February 2018 focused on ICANN's three proposed interim compliance models and sought questions and feedback on those. Cross-community sessions at ICANN60 and ICANN61 provided additional fora for receiving community feedback.[5] Throughout this process there's been regular dialogues with the community, and since September 2017, ICANN has provided updates to the community on at least a monthly basis, and has provided multiple opportunities for community consultation and feedback.[6] Additionally, ICANN's communication and engagement teams have been working to ensure information is distributed to the wider community.

2.3. At the request of the community, ICANN commissioned European law firm Hamilton to produce a series of memoranda outlining the GDPR's impact on gTLD Registration Data and directory services. ICANN released these memoranda and gave the community the opportunity to submit questions for Hamilton to consider, the responses to which were also made publicly available. The memoranda concluded that the WHOIS system would have to change in light of the law, responded to community questions about the law, and provided examples of how Registration Data directory services may change to comply with the GDPR.[7]

2.4. On 12 January 2018, ICANN published three proposed interim models for compliance and sought community input. The models reflected discussions from across the community and with data protection authorities, legal analyses, as well as the proposed community models received to date.[8]

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[3] https://www.icann.org/resources/pages/gtld-registration-dataflow-matrix-2017-07-24-en
[4] *See* https://www.icann.org/resources/pages/gdpr-legal-analysis-2017-11-17-en
[5] https://www.icann.org/resources/pages/data-protection-meetings-2017-12-08-en
[6] https://www.icann.org/resources/pages/gdpr-legal-analysis-2017-11-17-en#discussions
[7] https://www.icann.org/resources/pages/gdpr-legal-analysis-2017-11-17-en
[8] https://www.icann.org/en/system/files/files/interim-models-gdpr-compliance-12jan18-en.pdf

2.5.   The community provided many comments on the three proposed interim compliance models, which are summarized and analyzed in Section 5 of the Interim Model for Compliance with ICANN Agreements and Policies in Relation to the European Union's General Data Protection Regulation.[9]

2.6.   Discussions with various parts of the community suggest that there was convergence on key elements, including layered/tiered access for Registration Data; elements of a minimum public Registration Data set; and an accreditation program for access to full Registration Data for users with a legitimate purpose (to be developed in consultation with the Governmental Advisory Committee, data protection authorities and contracted parties with full transparency to the ICANN community). However, there were some competing views on the requirements of the GDPR and a few key elements, namely:

(i)   whether Registrars must continue to collect contact details for administrative and technical contacts; and transfer them to Registry Operators and data escrow providers;

(ii)   whether email addresses for registrant, administrative, and technical contacts should be displayed in the public Registration Data directory service, or anonymized;

(iii)   whether the GDPR should be applied narrowly, or expanded in scope because of the extra-territorial application of the GDPR to controllers and processors outside of the EU when their processing activities are related to offering goods or services to data subjects in the EU. This is particularly important due to the global nature of Registry Operators and Registrars and their processing activities.

(iv)   whether differentiation should be made between legal versus natural persons; and

(v)   what are the elements of a minimum public Registration Data set that would be published while an accreditation program for layered/tiered access is being developed.

2.7.   After extensive community consultations, Internet stakeholders broadly agreed on the necessity for, and many elements of, a high-level framework for changes to Registration Data directory services. These included layered/tiered access to non-public WHOIS data, an accreditation program to gain access to non-public WHOIS for legitimate purposes, and a more limited public Registration Data set.

2.8.   With this input, and feedback received on the three ICANN-proposed models, ICANN published a single model for compliance to be used in the interim period on 8 March 2018.[10] That model is now reflected in the Temporary Specification.

2.9.   In addition to the dialogues and engagement with the community, ICANN also provided support to community discussions, including a community request at ICANN61 in March 2018 for ICANN to provide secretariat support for a community group discussing a process for

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[9] https://www.icann.org/en/system/files/files/gdpr-compliance-interim-model-08mar18-en.pdf
[10] https://www.icann.org/news/blog/data-protection-privacy-issues-update-more-details-published-on-icann-proposed-interim-model

providing accredited access to non-public Registration Data for users with a legitimate purpose, as defined by the GDPR.[11]

3. Steps ICANN has taken to ensure the Temporary Specification complies with the GDPR and addresses other public policy considerations

3.1. ICANN has engaged in detailed discussions with European Union data protection authorities including the Article 29 Working Party (WP29), regarding the WHOIS system and the GDPR since 2017.

3.2. ICANN and the European Commission have exchanged correspondence on the history of the GDPR and other policies regarding Personal Data, as well as the history of the WHOIS system.[12]

3.3. In furtherance to ICANN's request for guidance on the application of the GDPR, the WP29 sent a letter on 6 December 2017 regarding the legal grounds for publication of Registration Data.[13]

3.4. In a 29 January 2018 letter, the European Commissioner for Migration, Home Affairs and Citizenship, the Commissioner for Justice, Consumers and Gender Equality, and the Commissioner for the Security Union highlighted the importance of the GAC's 2007 WHOIS Principles[14] and "the corresponding need to preserve WHOIS functionality and access to its information."[15]

3.5. On 7 February 2018, ICANN received a letter from the European Commission's Directorate-General for Communications Networks, Content and Technology providing technical input on ICANN's Proposed Interim Model.[16]

3.6. On 12 April 2018, ICANN received a letter from WP29 providing further input on ICANN's Proposed Interim Model.[17]

3.7. Regular dialogues were also held, and continue to be, with the Governmental Advisory Committee (GAC) during ICANN meetings, and through communications and advice provided by the GAC.

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[11] https://www.icann.org/resources/pages/gdpr-legal-analysis-2017-11-17-en#discussions
[12] https://www.icann.org/resources/pages/data-protection-correspondence-2017-12-08-en
[13] https://www.icann.org/en/system/files/correspondence/falque-pierrotin-to-chalaby-marby-06Dec17-en.pdf
[14] https://gac.icann.org/principles-and-guidelines/public/principles-whois-services.pdf
[15] https://www.icann.org/en/system/files/correspondence/avramopoulos-et-al-to-marby-29jan18-en.pdf
[16] https://www.icann.org/en/system/files/correspondence/viola-to-marby-07feb18-en.pdf
[17] https://www.icann.org/en/system/files/correspondence/jelinek-to-marby-11apr18-en.pdf

3.8. On 10 May 2018, ICANN sent a letter with additional questions for clarification to WP29 Chairperson Andrea Jelinek, following ICANN's meeting with WP29 representatives on 23 April 2018.[18]

3.9. All of these inputs have been carefully considered as part of developing the Temporary Specification.

3.10. ICANN continues to engage with the GAC and WP29, and the ICANN Board may make adjustments to implementation details of the Temporary Specification based on further inputs and guidance from WP29 or the European Data Protection Board, as a result of the Board-GAC Bylaws Consultation, as a result of a court order from a relevant court of competent jurisdiction regarding GDPR, or additional legislation or regulation.

4. How the Temporary Specification has been tailored as narrowly as possible to address the requirements of the GDPR

4.1. Consistent with the requirements in the Registry and Registrar Accreditation Agreements for emergency temporary policies, the Temporary Specification has been tailored as narrowly as possible to address the requirements of the GDPR.

4.2. The Temporary Specification includes the following new and modified requirements necessary for compliance with the GDPR:

4.2.1. Data Processing requirements for handling of Personal Data in Registration Data. These requirements need to be incorporated into the Registry and Registrar Accreditation Agreements to ensure that ICANN, Registry Operators, Registrars, Data Escrow Agents, and any other parties handling Personal Data in Registration Data comply with the GDPR.

4.2.2. Layered/tiered access. Layered/tiered access has been identified and supported by European data authorities and various stakeholders as the mechanism for balancing the legitimate interests defined in Section 4 of the Temporary Specification ("Lawfulness and Purposes of Processing gTLD Registration Data") with the interests, rights, and freedoms of the affected data subject. The tiered/layered access framework for Registration Data directory services implemented in the Temporary Specification is specifically designed to minimize the intrusiveness of data Processing, while still permitting necessary Processing. Processing under the tiered/layered access framework also minimizes the risk of unauthorized and unjustified Processing.

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[18] https://www.icann.org/en/system/files/correspondence/marby-to-jelinek-10may18-en.pdf

4.2.3. Data collection requirements. The Temporary Specification maintains current requirements for robust collection of Registration Data (including registrant, administrative, and technical contact information) so that users with a legitimate purpose can continue to have access to this data by requesting access to this Registration Data from Registrars and Registry Operators. Other users would have public access to a minimum set of Registration Data and be able to contact a registrant, administrative, or technical contact through an anonymized email or web form. This approach is designed to minimize the intrusiveness of data Processing, while still providing a means to contact, but not identify, the registrant, administrative, or technical contacts.

4.2.4. RDAP. The existing WHOIS protocol is limited in its ability to support layered/tiered access. RDAP implementation is necessary to provide for a robust mechanism to support the layered/tiered access model. Service Level Agreements and reporting for RDAP are also included so as to provide necessary requirements for the system implementation work.

4.2.5. Scope of applicability of changes to Registration Data directory services. The Temporary Specification is required to be implemented where required under the GDPR. It also provides limited flexibility to Registry Operators and Registrars to apply the requirements beyond where required by the GDPR when such Registry Operator or Registrar has a commercially reasonable purpose to do so or it is not technically feasible to limit application of the requirements to the European Economic Area ("EEA"). Permitting limited flexibility to implement changes to Registration Data directory services beyond where required under the GDPR is a feature of the Temporary Specification because of the extra-territorial application of the GDPR to controllers and processors outside of the EEA when their processing activities are related to offering goods or services to data subjects in the EEA.

The rationale behind the broadened territorial scope of the GDPR was to ensure the protection of EEA data subjects in cases in which controllers or processors not established in the EU nevertheless address their business activities to EEA data subjects. With regard to the WHOIS system, however, the extra-territorial reach of the GDPR leads to difficulties in determining the exact scope of application of the GDPR. Registrars will hardly want to exclude the EEA from their service offerings. At the same time providing for different rules for processing registrant data is difficult in practice. Also taking into account that an increasing number of countries, for example, in the Asia-Pacific region and in South America have adopted or are in the processing of adopting GDPR-like data protection regimes, adopting GDPR requirements as the global standard for Registration Data processing activities in connection with the WHOIS system may provide for greater uniformity and consistency for these other jurisdictions.

The ability to apply the changes in the Temporary Specification beyond the European Economic Area also recognizes that not allowing for such a feature could potentially put

Registry Operators and Registrars not established in the European Economic Area at a competitive disadvantage if they do not have the option to apply the model on a global basis. Furthermore, it may be difficult in practice only to apply the changes to collection and Processing linked to the European Economic Area depending upon how an individual Registry Operator or Registrar has set up its systems.

4.2.6. <u>Registrations of legal and natural persons</u>. The Temporary Specification applies to all registrations, without requiring Registrars and Registry Operators to differentiate between registrations of legal and natural persons. This is consistent with existing requirements which do not require Registrars and Registry Operators to distinguish between various types of registrants. It may be difficult to draw a clear line between Personal Data relating to natural or to legal persons, for example, in case of natural persons with such a close financial, personal or commercial entanglement with the legal person so that information about the legal person can be related to such natural persons (e.g., in case of a sole proprietorship or a GmbH owned by one person). Also, while it is true that the GDPR does not protect data pertaining to legal persons, the registrations of legal persons may include personal data of natural persons. Also, it may be difficult in practice to check millions of registration records and distinguish between registrations of legal and natural persons. Considering these points, the requirements in the Temporary Specification apply to all domain name registration Personal Data.

4.2.7. <u>Maintaining the existing ICANN policies and procedures</u>. The GDPR impacts a number of existing ICANN policies and procedures. To the extent possible, the Temporary Specification has been tailored as narrowly as possible to allow the continued operation of these existing policies and procedures. In a few instances, modifications to some of these existing policies and procedures were necessary, including the Transfer Policy, Uniform Rapid Suspension (URS) Technical Requirements, and Uniform Domain Name Dispute Resolution Policy Rules (UDRP Rules), Bulk Registration Data Access (BRDA), and Registration Data search capabilities. The modifications were limited to (1) ensuring continued access to the full Registration Data for purposes of the URS and UDRP, which are protection mechanisms for trademark holders against abusive registrations; (2) minimal adjustments to the Transfer Policy to ensure that Registered Name Holders can continue to transfer their domain names to other Registrars absent registrant and administrative contact's contact information in the public Registration Data directory; (3) clarifying the requirement of bulk Registration Data transfer to ICANN to meet the GDPR minimization principle; and (4) requiring Registrars and Registry Operators to comply with the requirements for access to Personal Data in Registration Data where Registration Data search capability is offered.

4.3. This Advisory also incorporates by reference the additional legal analysis of elements in the [Interim GDPR Compliance Model (Cookbook)](), upon which the Temporary Specification was built.

Explanation of Changes to Temporary Specification (May 14 vs May 16)
Draft: 16 May 2018

Section	Explanation
1. Preamble	Updated high-level description of the requirements in the Temporary Specification to note the change that Registries and Registrars may apply the requirements beyond the European Economic Area where commercially reasonable <u>or</u> where it is not technically feasible to limit application of the requirements to the European Economic Area.
2. Section 1.3 – Scope	Updated the language to clarify that all remaining provisions of the Registry Agreement and Registrar Accreditation Agreement not modified by the Temporary Specification remain in effect.
3. Section 3 – Policy Effective Data	Updated to include 25 May 2018 as the effective date of the Temporary Specification.
4. Section 4 –Lawfulness and Purposes of Processing gTLD Registration Data	Made changes to terminology: legitimate "purpose" and legitimate "interest" where needed.
5. Section 5.2 – Registrar and Registry Operator Service Level Agreement	Revised language to allow ICANN and contracted parties to engage in good faith negotiations on appropriate service level agreements concerning RDAP. If no agreement is reached by 31 July 2018, then contracted parties will be required to comply with comparable service levels already existing with respect to RDDS. This change was made to reduce the possibility of challenges that the Temporary Specification is not as narrowly tailored as feasible.
6. Section 6.2 – Registry Operator Monthly Reports	Revised language to allow ICANN and registries to engage in good faith negotiations on appropriate monthly reporting requirements concerning RDAP. If no agreement is reached by 31 July 2018, then registries will be required to comply with comparable monthly reporting requirements already existing with respect to RDDS. This change was made to reduce the possibility of challenges that the Temporary Specification is not as narrowly tailored as feasible.
7. Section 6.3.2 – Registry-Registrar Agreements	Updated language to confirm that the form of standard data processing addendum that ICANN will approve for use by registries in their Registry-Registrar Agreements will include EU Standard Contractual Clauses that include safeguards for international transfers of data outside of the European Economic Area.
8. Section 8 – Miscellaneous	Added a new section to: • confirm that the Temporary Specification does not create any third-party beneficiary rights. This is a similar provision in the current Registry and Registrar Accreditation Agreements. • outline the reasons/mechanism for the Board to make modifications to the Temporary Specification.

Section	Explanation
	• Establish that the terms of the Temporary Specification are severable so that the invalidity or unenforceability of any term or provisions of Specification will not affect the validity or enforceability of the balance of the Specification.
9. Appendix A, Section 2.1	Added text to clarify that the requirements to redact the data available in public WHOIS do not apply where the Registry Operator operates a "thin" registry.
10. Appendix A, Section 2.6	Added a new section to require Registries and Registrars to publish full WHOIS data if the registration is privacy/proxy registration. This is because the personal data is already redacted from such privacy/proxy registrations.
11. Appendix B – Service Level Requirements	Per changes to Section 5.2 (described in #5 above), this Appendix has been deleted.
12. Renumbered Appendix B – Data Escrow Requirements	Added new language to allow contracted parties to amend and restate their Data Escrow Agreements (without further approval by ICANN) to incorporate data processing terms and conditions substantially similar to the standard form data processing addendum to be approved by ICANN.
13. Renumbered Appendix C – Data Processing Requirements	Updated the data processing agreements to more specifically detail the roles of ICANN, registries and registrars with respect to certain processing activities (e.g. transfer of data to escrow provider, transfer of data to emergency back-end registry operator, etc.) Also, at the suggestion of the contracted parties, incorporated additional details about requirements for processing data.
14. Renumbered Appendix D – Uniform Rapid Suspension	Added language to allow a complainant to file a "Doe" complaint if the contact information of the domain name holder required by the URS rules to be in the complaint is not available in public WHOIS or is not otherwise known to the complainant.
15. Renumbered Appendix E – Uniform Domain Name Dispute Resolution Policy	Added language to allow a complainant to file a "Doe" complaint if the contact information of the domain name holder required by the UDRP rules to be in the complaint is not available in public WHOIS or is not otherwise known to the complainant.
16. Annex	Clarified the purpose of the Annex and confirmed that the Annex is not intended to impose requirements on registries and registrars.
17. Implementation Notes	Updated to conform to similar changes made to the Advisory Statement.

TITLE:	Consideration of the Temporary Specification for gTLD Registration Data (Implementation of GDPR Interim Compliance Model)
PROPOSED ACTION:	For Resolution

PROPOSED RESOLUTION:

Whereas, the European Union's General Data Protection Regulation (GDPR) is a set of rules adopted by the European Parliament, the European Council and the European Commission that will impose new obligations on all companies and organizations that collect and maintain any "personal data" of residents of the European Union, as defined under EU data protection law. The GDPR will take full effect on 25 May 2018.

Whereas, the GDPR has given new prominence and urgency to the long-standing debate about data protection and privacy in WHOIS.

Whereas, over the past several months ICANN org has consulted with community stakeholders, contracted parties, European data protection authorities, legal experts, and interested governments to understand the potential impact of the GDPR to personal data that participants in the gTLD domain name ecosystem collect, display and process (including registries and registrars) pursuant to ICANN contracts and policies.

Whereas, through an iterative process and with feedback from the community, ICANN org developed a proposed interim model for how ICANN and gTLD registries and registrars could continue to comply with ICANN contractual requirements and community-developed policies in relation to the GDPR (the "Proposed Interim Compliance Model").

Whereas, ICANN org requested and has received guidance from the Article 29 Working Party concerning the Proposed Interim Compliance Model, including areas where ICANN as received governmental advice and input reflecting differing views.

Whereas, the Governmental Advisory Committee ("GAC") provided advice to the Board in its San Juan Communiqué (15 March 2018) concerning the Proposed Interim

Compliance Model. The advice was the subject of an exchange between the Board and the GAC to clarify the Board's understanding of the advice.

Whereas, ICANN org communicated with European data protection authorities and requested adequate time for gTLD registries and registrars to implement the Interim Compliance Model once additional clarification from the data protection authorities was incorporated into the Proposed Interim Compliance Model. The Article 29 Working Party highlighted the importance of ICANN communicating its full planned timescale by which the solutions will be implemented.

Whereas, ICANN is continuing to discuss with the ICANN community proposed unified access models for non-public WHOIS data.

Whereas, to cause compliance with the GDPR, the Board has considered adopting a temporary specification to implement the Proposed Interim Compliance Model, utilizing the procedure for Temporary Policies established in the Registry Agreement and the Registrar Accreditation Agreement (the "Temporary Specification for gTLD Registration Data" or "Temporary Specification"). A draft Temporary Specification was first provided to the ICANN community and the Board on 11 May 2018.

Whereas, the Board, at its Vancouver workshop on 12-13 May 2018, engaged in a substantial and robust review over two days regarding a proposed Temporary Specification, including identification of questions and potential improvements, and wants to share with the community the updates to a proposed Temporary Specification generated as a result of the Board's review to date. On 13 May 2018, the Board took a resolution identifying its intention to consider a Temporary Specification on or about 17 May 2018, and directing the ICANN CEO and President to continue to support the Board in discussion across the ICANN community regarding the refinements made prior to the Board's consideration of a proposed Temporary Specification for adoption.

Whereas, on 14 May 2018, ICANN org released an updated proposed Temporary Specification to the community and the Board, with updates reflecting the Board's inputs. On 15 May 2018, ICANN org convened a webinar to discuss the updates to the proposed

Temporary Specification, with inputs received from across the ICANN community. The ICANN Board also accepted invitations from collections of stakeholders to discuss the proposed Temporary Specification.

Whereas, during May 2018, the Board has received multiple letters from parts of the ICANN community regarding the contents of a draft Temporary Specification.

Whereas, the Board has used the time since its 13 May 2018 resolution to confirm that appropriate modifications are incorporated into a proposed Temporary Specification prior to considering adoption. The Board also understands that additional explanatory materials on the Temporary Specification being adopted today will assist in creating a general understanding of the impact of the Temporary Specification across the ICANN community.

Whereas, the Board has communicated to the GAC that the Board made a preliminary determination that its approach in the proposed Temporary Specification is inconsistent or could be viewed as inconsistent with certain items of the GAC's advice in the San Juan Communiqué, in particular given the guidance provided by the Article 29 Working Party. The Board provided a scorecard to reflect items of the GAC's advice that the Board may reject because of this.

Whereas, ICANN org continues to engage with the Article 29 Working Party to seek clarity on guidance provided by the Article 29 Working Party about the Interim Compliance Model being implemented through the Temporary Specification.

Resolved (2018.05.17.xx), the Board adopts the Temporary Specification on gTLD Registration Data pursuant to the procedures in the Registry Agreement and Registrar Accreditation Agreement concerning the establishment of temporary policies. In adopting this Temporary Specification, the Board has determined that:

1. The modifications in the Temporary Specification to existing requirements concerning the processing of personal data in registration data is justified and immediate temporary establishment of the Temporary Specification is necessary

to maintain the stability or security of Registrar Services, Registry Services or the DNS or the Internet.

2. The Temporary Specification is as narrowly tailored as feasible to achieve the objective to maintain the stability or security of Registrar Services, Registry Services or the DNS or the Internet.

3. The Temporary Specification will be effective for a 90-day period beginning 25 May 2018. The Board will reaffirm its temporary adoption every 90 calendar days for a total period not to exceed one year.

Resolved (2018.05.17.xx), the Board understands that there are still outstanding related items necessary to be completed prior to the effective date of the Temporary Specification, specifically standard forms of data processing addenda (which contain EU Model Clauses to govern international data transfers where applicable) to be included in Registry-Registrar Agreements and Data Escrow Agreements, and directs the ICANN President and CEO, or his designee(s), to complete these items and provide notice of where these items can be found.

Resolved (2018.05.17.xx), the Board acknowledges that there are other implementation items that require further community conversation and that the Board encourages the community to resolve as quickly as possible after the effective date of the Temporary Specification. These items are identified in the Annex to the Temporary Specification, though they are not required to be part of the scope of the resulting policy development process.

Resolved (2018.05.17.xx), the Board affirms that further inputs are expected based on experiences once the GDPR goes into full effect, the Temporary Specification includes a process through which the ICANN Board may make adjustments to the Temporary Specification to address further inputs from the Article 29 Working Party/European Data Protection Board, court order of a relevant court of competent jurisdiction concerning the GDPR, applicable legislation or regulation, and/or as a result of the Board-GAC Bylaws Consultation.

Resolved (2018.05.17.xx), the global public interest is served by the implementation of a unified policy governing aspects of the gTLD Registration Data when the GDPR goes into full effect.

Resolved (2018.05.17.xx), the ICANN President and CEO, or his designee(s), is directed to produce additional explanatory material, in particular an identification of all policy and contractual terms impacted by the Temporary Specification.

Resolved (2018.05.17.xx), the Board hereby implements the consensus policy development process set forth in ICANN's Bylaws and will consult with the GNSO Council as soon as possible on the path forward to consider the development of a consensus policy on the issues within the Temporary Specification. The Board will consult with the GNSO Council about the expected scope of the PDP, timing considerations, and relevant procedural requirements.

Resolved (2018.05.17.xx), the Board adopts the Advisory Statement Concerning Adoption of the Temporary Specification for gTLD Registration Data, which sets forth its detailed explanation of its reasons for adopting the Temporary Specification and why the Board believes such Temporary Specification should receive the consensus support of Internet stakeholders.

Resolved (2018.05.17.xx), the Board confirms that the Chair of the ICANN Board will confer with the GAC Chair as to an appropriate time and agenda for the Bylaws Consultation meeting between the GAC and the Board with regard to elements of the Temporary Specification that are inconsistent or could be viewed as inconsistent with certain items of GAC advice in the San Juan Communiqué. The Bylaws Consultation shall be pursuant to the "Process for Consultations between the ICANN Board of Directors and the Governmental Advisory Committee, including those required pursuant to Article XI Section 2.1.j of the ICANN Bylaws".

PROPOSED RATIONALE:

The European Union's General Data Protection Regulation (GDPR) will go into effect on 25 May 2018. The GDPR is a set of rules adopted by the European Parliament, the

European Council and the European Commission that will impose new obligations on all companies and organizations that collect and maintain any "personal data" of residents of the European Union, as defined under EU data protection law. The GDPR impacts how personal data is collected, displayed and processed among participants in the gTLD domain name ecosystem (including registries and registrars) pursuant to ICANN contracts and policies. Modifications need to be made prior to 25 May to allow ICANN and gTLD registries and registrars to continue to comply with ICANN contractual requirements and community-developed policies in relation to the GDPR. Though there has been significant work across the ICANN community to reach a compliance model, ICANN-adopted policies need to be updated to allow compliance with the GDPR. A full community-developed consensus policy is not yet available. Without a unified applicable policy in place, there will be fragmentation in how ICANN's contracted parties implement their own compliance programs in relation to gTLD registration data. As such, a unified applicable policy is needed in place prior to 25 May 2018, and doing so is in the public interest. The public interest is not served if the ICANN Board fails to take action on this critical issue.

ICANN org's agreements with registries and registrars require compliance with Board-adopted temporary policies or specifications. To develop a temporary policy or specification, at least two-thirds of the Board must vote to approve the temporary specification, and the changes in the specification must be justified and "necessary to maintain the stability or security of Registrar Services, Registry Services or the DNS or the Internet." The temporary policy or specification must be as narrowly tailored as feasible to achieve those objectives.

ICANN org, in consultation with the Board, has been exploring the possibility of a temporary policy or specification as a mechanism to implement the Interim GDPR Compliance Model. A draft of a proposed Temporary Specification for gTLD Registration Data ("Temporary Specification") was released to the Board and the community on 11 May 2018. That proposed Temporary Specification is drafted to establish temporary requirements for how ICANN and gTLD registries and registrars will

continue to comply with existing ICANN contractual requirements and community-developed policies in relation to the GDPR.

At the Board's Vancouver Workshop, the Board used its time on 12 and 13 May 2018 to engage in substantial discussion with ICANN organization on the posted draft of the Temporary Specification, which resulted in additional proposed changes. At the end of its workshop, the Board took a resolution signalling its intention to consider a proposed Temporary Specification, and that doing so will be in the public interest. The Board identified that because of the significance of the Board approving a Temporary Specification, it was appropriate for the Board to take additional time prior to adoption, both for the Board's review and to have opportunities to discuss with the ICANN community on the contents of a proposed Temporary Specification.

The Board in its 13 May 2018 also identified that taking action on a Temporary Specification is within the public interest, because of the need for a uniformly applicable policy drafted to achieve compliance with the GDPR. It is important that a Temporary Specification be adopted so that it can be in force on 25 May 2018. The Board reaffirms these positions today.

An updated draft of a proposed Temporary Specification was shared with the ICANN community and Board on 14 May 2018. On 15 May 2018, ICANN org hosted a community-wide webinar to discuss the updated document. Where invited, the Board accepted invitations from community constituencies to further discuss a draft Temporary Specification. Additional refinements were made to the language of the Temporary Specification as a result of these ongoing discussion, however, there were no changes made that modified how the Proposed Interim Compliance Model is implemented through the Temporary Specification.

Through the Board's deliberations, it also identified that there are areas that are not policy topics within a Temporary Specification, but where further community conversation is needed on implementation. These items are identified in the Annex to the Temporary Specification, though they are not required to be part of the scope of the

resulting policy development process. The Board encourages the community to resolve these items as quickly as possible after the effective date of the Temporary Specification.

This action is consistent with ICANN's mission "[…] to ensure the stable and secure operation of the Internet's unique identifier systems […]". As one of ICANN's primary roles is to be responsible for the administration of the topmost levels of the Internet's identifiers, facilitating the ability to identify the holders of those identifiers is a core function of ICANN.

ICANN's mission to ensure the security and stability of the operation of the Internet's system of unique identifiers has led to the obligations associated with providing the WHOIS service that are in ICANN consensus policies and contracts that ICANN has with registries and registrars. These policies and contractual obligations govern the collection, retention, escrow, transfer, and display of WHOIS registration data, which includes contact information of natural and legal persons as well as technical information associated with a domain name. Through these policies and contracts, ICANN sets the minimum requirements for WHOIS, ensuring the availability of WHOIS information to mitigate attacks that threaten the stable and secure operation of the Internet and to serve the public service uses above.

WHOIS is not a single, centrally managed database. Rather, registration data is held in disparate locations and administered by multiple registries and registrars. They each set their own conventions for the WHOIS service, consistent with the minimum requirements established in their contracts with ICANN.

Many gTLD registries and registrars are concerned about whether ICANN policies and contracts requiring them to collect, create, retain, escrow, and publish a variety of data elements related to registry/registrar operations, domain name registrations, and registrants are in conflict with the GDPR.

To ensure continued availability of the WHOIS service to the greatest extent possible and other processing of gTLD registration data while complying with the GDPR and avoid fragmentation of WHOIS, the Temporary Specification will provide a single, unified

interim model to ensure a common framework for registration data directory services. To continue this public service and maintain the security and stability of the Internet, the Temporary Specification will allow for continued provision of WHOIS services via ICANN's contracts with domain name registries and accredited registrars.

There is work continuing to define standard forms of data processing addenda (containing EU Model Clauses to govern international data transfers where applicable) for Registry-Registrar Agreements and Data Escrow Agreements that Registry Operators and Registrars can rely upon to implement certain of the obligations in force in the Temporary Specification without the requirement to give notice to ICANN and seek approval for necessary data processing provisions. These will be completed and made publicly available prior to the Temporary Specification going into force.

As required when a temporary policy or specification is adopted, the Board also is taking action to implement the consensus policy development process. The Board will consult with the GNSO Council on potential paths forward (e.g. Expedited Policy Development Process) for considering the development of a consensus policy on the issues within the Temporary Specification, which must be concluded in a one-year time period.

The Board has developed an Advisory Statement to provide a detailed explanation of its reasons for adopting the Temporary Specification and why the Board believes such Temporary Specification should receive the consensus support of Internet stakeholders. The Advisory Statement is provided here [INSERT LINK] and is incorporated by reference into the rationale to the Board's resolutions.

The Board is also taking action today to confirm that Board will continue to move forward with the Bylaws Consultation meeting between the GAC and the Board to address elements of the Temporary Specification that are inconsistent or could be viewed as inconsistent with items of the GAC advice in the San Juan Communiqué. Article 12, Section 12.2(a)(ix) of the ICANN Bylaws permits the GAC to "put issues to the Board directly, either by way of comment or prior advice, or by way of specifically recommending action or new policy development or revision to existing policies." The Bylaws require the Board to take into account the GAC's advice on public policy matters

in the formulation and adoption of the polices. If the Board decides to take an action that is not consistent with the GAC advice, it must inform the GAC and state the reasons why it decided not to follow the advice. Any GAC advice approved by a full consensus of the GAC (as defined in the Bylaws) may only be rejected by a vote of no less than 60% of the Board, and the GAC and the Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution. Taking steps to move forward with the Board-GAC Bylaws Consultation process will have a positive impact on the community because it will assist with resolving the advice from the GAC concerning ICANN's approach for enforcing compliance with agreements with registries and registrars in relation to the GDPR.

Overall, the Board's actions are expected to have an immediate impact on the continued security, stability or resiliency of the DNS, as it will assist in maintaining WHOIS to the greatest extent possible while the community works to develop a consensus policy. The initiation of focused consensus policy development work to consider the Temporary Specification is expected to have an impact on financial resources as the research and work progresses. If the resource needs are greater than the amounts currently budgeted to perform work on WHOIS- and GDPR-related issues, the President and CEO will bring any additional resource needs to the Board Finance Committee for consideration, in line with existing fund request practices.

When the Temporary Specification goes into effect on 25 May 2018, the WHOIS system will remain available, though there will be some changes. Registry Operators and Registrars are still required to collect all registration data. If Internet users submit a WHOIS query, at a minimum the user will receive "thin" data in return, including technical data sufficient to identify the sponsoring Registrar, status of the registration, and creation and expiration dates for each registration. Additionally, the user will have access to an anonymized email address or a web form to facilitate email communication with the relevant contact (e.g. registrant, administrative, technical contacts). ICANN org is expected to enforce the Temporary Specification as it is fully incorporated into the relevant Registry Agreements and Registrar Accreditation Agreements.

This is an Organizational Administrative Function of the Board for which public comment is not required, however the proposed Interim Compliance Model implemented through the Temporary Specification has been the subject of comments from the community over the past several months (https://www.icann.org/resources/pages/gdpr-legal-analysis-2017-11-17-en). The Board actions approved today help serve the public interest and further the requirement in ICANN's Bylaws to "assess the effectiveness of the then current gTLD registry directory service and whether its implementation meets the legitimate needs of law enforcement, promoting consumer trust and safeguarding registrant data." [Bylaws Sec. 4.6(e)(ii)]

Signature Block:

Submitted by:

Position:

Date Noted:

Email:

Proposed Temporary Specification for gTLD Registration Data – WORKING DRAFT

(Revised – as of 16 May 2018)
Prepared by: ICANN organization

The General Data Protection Regulation (GDPR) was adopted by the European Union (EU) in April 2016 and takes full effect on 25 May 2018 across the EU countries. Over the past year, ICANN organization (ICANN org) has consulted with contracted parties, European data protection authorities, legal experts, and interested governments and other stakeholders to understand the potential impact of the GDPR to Personal Data that is Processed by certain participants in the gTLD domain name ecosystem (including Registry Operators and Registrars) pursuant to ICANN policies and contracts between ICANN and such participants that are subject to the GDPR.

This Temporary Specification for gTLD Registration Data (Temporary Specification) establishes temporary requirements to allow ICANN and gTLD registry operators and registrars to continue to comply with existing ICANN contractual requirements and community-developed policies in light of the GDPR. Consistent with ICANN's stated objective to comply with the GDPR, while maintaining the existing WHOIS system to the greatest extent possible, the Temporary Specification maintains robust collection of Registration Data (including Registrant, Administrative, and Technical contact information), but restricts most Personal Data to layered/tiered access. Users with a legitimate and proportionate purpose for accessing the non-public Personal Data will be able to request such access through Registrars and Registry Operators. Users will also maintain the ability to contact the Registrant or Administrative and Technical contacts through an anonymized email or web form. The Temporary Specification shall be implemented where required by the GDPR, while providing flexibility to Registry Operators and Registrars to choose to apply the requirements on a global basis where commercially reasonable to do so or where it is not technically feasible to limit application of the requirements only where required by GDPR. The Temporary Specification applies to all registrations, without requiring Registrars to differentiate between registrations of legal and natural persons. It also covers data processing arrangements between and among ICANN, Registry Operators, Registrars, and Data Escrow Agents as necessary for compliance with the GDPR.

This Temporary Specification was adopted by resolution of the ICANN Board of Directors (ICANN Board) on [TBD], pursuant to the requirements for the establishment of Temporary Policies and Temporary Specification or Policies (as such terms are defined in ICANN's registry agreements and registrar accreditation agreements). An advisory statement containing a detailed explanation of the ICANN Board's reasons for adopting this Temporary Specification is available here <<TBD>>.

Table of Contents

1.   Scope

1.1.   Terms used in this Temporary Specification are defined in Section 2.

1.2.   This Temporary Specification applies to all gTLD Registry Operators and ICANN-accredited Registrars.

1.3.   The requirements of this Temporary Specification supersede and replace the requirements contained in Registry Operator's Registry Agreement and Registrar's Registrar Accreditation Agreement regarding the matters contained in this Temporary Specification. To the extent there is a conflict between the requirements of this Temporary Specification and the requirements of Registry Operator's Registry Agreement and Registrar's Registrar Accreditation Agreement, the terms of this Temporary Specification SHALL control, unless ICANN determines in its reasonable discretion that this Temporary Specification SHALL NOT control. For purposes of clarity, unless specifically addressed and modified by this Temporary Specification, all other requirements and obligations within Registry Operator's Registry Agreement and Registrar's Registrar Accreditation Agreement and consensus policies remain applicable and in force

2. Definitions and Interpretation

The terms "MAY", "MUST", "MUST NOT", "REQUIRED", "RECOMMENDED", "SHALL", "SHALL NOT", "SHOULD NOT" and "SHOULD" are used to indicate the requirement level in accordance with RFC 2119, which is available at http://www.ietf.org/rfc/rfc2119.txt.

"Consent", "Controller", "Personal Data", "Processing", and "Processor" SHALL have the same definition as Article 4 of the GDPR.

"gTLD" SHALL have the meaning given in the Registrar Accreditation Agreement.

"Interim Model" means the Interim Model for Compliance with ICANN Agreements and Policies in Relation to the European Union's General Data Protection Regulation published at https://www.icann.org/en/system/files/files/gdpr-compliance-interim-model-08mar18-en.pdf and as may be amended from time to time.

"Registered Name" SHALL have the meaning given in the Registrar Accreditation Agreement.

"Registered Name Holder" SHALL have the meaning given in the Registrar Accreditation Agreement.

"Registrar Accreditation Agreement" means any Registrar Accreditation Agreement between a Registrar and ICANN that is based on that certain 2013 Registrar Accreditation Agreement approved by the ICANN Board on June 27, 2013 ("2013 Registrar Accreditation Agreement") or any successor to such agreements that is approved by the ICANN Board.

"Registration Data" means data collected from a natural and legal person in connection with a domain name registration.

"Registration Data Directory Services" refers to the collective of WHOIS, Web-based WHOIS, and RDAP services.

"Registry Agreement" means any gTLD registry agreement between Registry Operator and ICANN, including any Registry Agreement that is based on the new gTLD Registry Agreement approved by the ICANN Board on 2 July 2013, as amended ("Base Registry Agreement").

If a term is capitalized but not defined in this Temporary Specification, such term SHALL have the meaning given to it in the Registry Agreement or Registrar Accreditation Agreement, as applicable.

Unless otherwise specifically provided for herein, the term "or" SHALL NOT be deemed to be exclusive.

When Registry Operator and Registrar are referenced together in a provision of this Temporary Specification, each such provision represents a separate requirement and obligation of each Registry Operator and each Registrar pursuant to its respective Registry Agreement or Registrar Accreditation Agreement.

3. Policy Effective Date

This Temporary Specification is effective as of 25 May 2018.

4. Lawfulness and Purposes of Processing gTLD Registration Data

4.1.   ICANN's mission, as set forth in Bylaws Section 1.1(a), is to "coordinate the stable operation of the Internet's unique identifier systems." Section 1.1 (a) describes in specificity what this mission entails in the context of names. While

ICANN's role is narrow, it is not limited to technical stability. Specifically, the Bylaws provide that ICANN's purpose is to coordinate the bottom-up, multistakeholder development and implementation of policies "[f]or 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" [Bylaws, Section 1.1(a)(i)], which is further defined in Annex G-1 and G-2 of the Bylaws to include, among other things:

- 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);

- maintenance of and access to accurate and up-to-date information concerning registered names and name servers;

- procedures to avoid disruptions of domain name registrations due to suspension or termination of operations by a registry operator or a registrar (e.g., escrow); and

- the transfer of registration data upon a change in registrar sponsoring one or more registered names.

4.2.   The Bylaws articulate that issues surrounding the provision of Registration Data Directory Services (RDDS) by Registry Operators and Registrars are firmly within ICANN's mission. The Bylaws provide further insight into the legitimate interests designed to be served by RDDS. For example, the Bylaws specifically obligate ICANN, in carrying out its mandate, to "adequately address issues of competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns, and rights protection" [Bylaws Section 4.6 (d)]. While ICANN has neither the authority nor expertise to enforce competition or consumer protection laws, and is only one of many stakeholders in the cybersecurity ecosystem, the provision of RDDS for legitimate and proportionate uses is a critical and fundamental way in which ICANN addresses consumer protection, malicious abuse issues, sovereignty concerns, and rights protection – enforcing policies that enable consumers, rights holders, law enforcement and other stakeholders to access the data necessary to address and resolve uses that violate law or rights.

4.3.   Accordingly, ICANN's mission directly involves facilitation of third party Processing for legitimate and proportionate purposes related to law enforcement, competition, consumer protection, trust, security, stability, resiliency, malicious abuse, sovereignty, and rights protection. ICANN is required by Section 4.6(e) of the Bylaws, subject to applicable laws, to "use commercially reasonable efforts to enforce its policies relating to registration directory services," including by working with stakeholders to "explore structural changes to improve accuracy and access to generic top-level domain registration data," "as well as consider[ing] safeguards for protecting such data." As a result, ICANN is of the view that the collection of Personal Data (one of the elements of Processing) is specifically mandated by the Bylaws. In addition, other elements of the Processing Personal Data in Registration Data by Registry Operator and Registrar, as required and permitted under the Registry Operator's Registry Agreement with ICANN and the Registrar's Registrar Accreditation Agreement with ICANN, is needed to ensure a coordinated, stable and secure operation of the Internet's unique identifier system.

4.4.   However, such Processing must be in a manner that complies with the GDPR, including on the basis of a specific identified purpose for such Processing. Accordingly, Personal Data included in Registration Data may be Processed on the basis of a legitimate interest not overridden by the fundamental rights and freedoms of individuals whose Personal Data is included in Registration Data, and only for the following legitimate purposes:

4.4.1.   Reflecting the rights of a Registered Name Holder in a Registered Name and ensuring that the Registered Name Holder may exercise its rights in respect of the Registered Name;

4.4.2.   Providing access to accurate, reliable, and uniform Registration Data based on legitimate interests not outweighed by the fundamental rights of relevant data subjects, consistent with GDPR;

4.4.3.   Enabling a reliable mechanism for identifying and contacting the Registered Name Holder for a variety of legitimate purposes more fully set out below;

4.4.4.   Enabling a mechanism for the communication or notification of payment and invoicing information and reminders to the Registered Name Holder by its chosen Registrar;

4.4.5.   Enabling a mechanism for the communication or notification to the Registered Name Holder of technical issues and/or errors with a Registered Name or any content or resources associated with such a Registered Name;

4.4.6.   Enabling a mechanism for the Registry Operator or the chosen Registrar to communicate with or notify the Registered Name Holder of commercial or technical changes in the domain in which the Registered Name has been registered;

4.4.7.   Enabling the publication of technical and administrative points of contact administering the domain names at the request of the Registered Name Holder;

4.4.8.   Supporting a framework to address issues involving domain name registrations, including but not limited to: consumer protection, investigation of cybercrime, DNS abuse, and intellectual property protection;

4.4.9.   Providing a framework to address appropriate law enforcement needs;

4.4.10. Facilitating the provision of zone files of gTLDs to Internet users;

4.4.11. 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;

4.4.12. Coordinating dispute resolution services for certain disputes concerning domain names; and

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

4.5.   In considering whether Processing of Personal Data contained in Registration Data is consistent with Article 6(1)(f) of the GDPR[1], the GDPR requires ICANN to balance the legitimate interests described above with the interests, rights, and

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[1] Article 6(1)(f) of the GDPR permits Processing where "necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data…."

freedoms of the affected data subject. ICANN finds that the Processing is proportionate for the following reasons:

4.5.1. The Processing of the limited Personal Data identified in this Temporary Specification is necessary to achieve the legitimate interests identified, as documented in many stakeholder comments and submissions over the course of a 12-month community consultation. This Processing specifically includes the retention of Personal Data already collected and the ongoing collection of Personal Data;

4.5.2. The tiered/layered access framework for RDDS identified in the Interim Model, and implemented in this Temporary Specification, is specifically designed to minimize the intrusiveness of Processing while still permitting necessary Processing;

4.5.3. Processing under the tiered/layered access framework as required by this Temporary Specification minimizes the risk of unauthorized and unjustified Processing;

4.5.4. This Temporary Specification contains requirements to ensure that Registered Names Holders are notified about the contemplated Processing and about their rights with respect to such Processing;

4.5.5. This Temporary Specification contains requirements to ensure that appropriate records of Processing activities will be maintained to meet the accountability obligations set forth in the GDPR.

5. Requirements Applicable to Registry Operators and Registrars

5.1. **Publication of Registration Data**. Registry Operator and Registrar MUST comply with the requirements of, and MUST provide public access to Registration Data in accordance with, Appendix A attached hereto ("**Appendix A**").

5.2. **Registrar and Registry Operator Service Level Agreement**. Registry Operator and Registrar acknowledge that in its implementation of a Registration Data Access Protocol (RDAP) service, they MUST comply with additional Service Level Agreements. ICANN and the contracted parties will negotiate in good faith the appropriate service levels agreements by 31 July 2018. If the contracted parties and ICANN are unable to define such Service Level Agreements through good

faith negotiations by such date, ICANN will require Registrar and Registry Operator to comply with Service Levels that are comparable to those service levels already existing in their respective agreements with respect to RDDS.

5.3. **Data Escrow**. Registry Operator and Registrar MUST comply with the additional requirements concerning Registration Data escrow procedures set forth in Appendix B attached hereto ("**Appendix B**").

5.4. **Data Processing Requirements**. Registry Operator and Registrar MUST comply with the requirements of, and MUST Process Personal Data in accordance with the terms and conditions set forth in Appendix C attached hereto ("**Appendix C**").

5.5. **International Data Transfers between Registry Operator, Registrar, and ICANN**. In the course of performing the requirements under this Temporary Specification, the Registry Agreement, and Registrar Accreditation Agreement, Registry Operator, Registrar and/or ICANN MAY be required to transfer Personal Data to a country that is not deemed adequate by the European Commission per Article 45(1) of the GDPR. In such a case, ICANN, Registry Operator, and/or Registrar MUST transfer Personal Data on the basis of adequate safeguards permitted under Chapter V of the GDPR, including the use of Standard Contractual Clauses (2004/915/EC) (or its successor clauses), and ICANN, Registry Operator and/or Registrar MUST comply with such appropriate safeguards.

5.6. **Uniform Rapid Suspension (URS)**. Registry Operator and Registrar MUST comply with the additional requirements for the 17 October 2013 URS High Level Technical Requirements for Registries and Registrars set forth in Appendix D attached hereto ("**Appendix D**").

5.7. **ICANN Contractual Compliance**. Registry Operator and Registrar MUST provide reasonable access to Registration Data to ICANN upon reasonable notice and request from ICANN for the purpose of investigating compliance-related inquiries and enforcement of the Registry Agreement, Registrar Accreditation Agreement, and ICANN Consensus Policies.

6. Requirements Applicable to Registry Operators Only

6.1. **Bulk Registration Data Access to ICANN**. Registry Operator MUST comply with, and MUST provide ICANN with periodic access to Registration Data in accordance with Appendix F attached hereto ("**Appendix F**").

6.2. **Registry Monthly Reports**. ICANN and Registry Operators will negotiate in good faith appropriate additional reporting requirements with respect to its implementation of RDAP by 31 July 2018. If ICANN and Registry Operators are unable to define such additional reporting requirements through good faith negotiations by such date, ICANN will require Registry Operator to comply with additional reporting requirements that are comparable to those already existing in its Registry Agreement with respect to RDDS.

6.3. **Registry-Registrar Agreements**.

6.3.1. Registry Operator MUST include Processing provisions in its Registry-Registrar Agreement with Registrar concerning the handling of Personal Data in a manner that complies with applicable requirements of Article 28 of the GDPR.

6.3.2. Registry Operator MAY amend or restate its Registry-Registrar Agreement to incorporate data Processing terms and conditions (which itself contains EU Model Clauses to govern international data transfers, where applicable between the respective parties) substantially similar to the requirements provided at <<https://www.icann.org/resources/pages/gtld-registration-data-specs-en>> without any further approval of ICANN, provided that Registry Operator MUST promptly deliver any such amended or restated Registry-Registrar Agreement to ICANN. Upon ICANN's receipt thereof, such amended or restated Registry-Registrar Agreements will be deemed to supplement or replace, as applicable, the approved Registry-Registrar Agreement that is attached as an appendix (if any) to Registry Operator's Registry Agreement.

7. Requirements Applicable to Registrars Only

7.1. **Notices to Registered Name Holders Regarding Data Processing**. Registrar SHALL provide notice to each existing, new or renewed Registered Name Holder stating:

7.1.1. The specific purposes for which any Personal Data will be Processed by the Registrar;

7.1.2. The intended recipients or categories of recipients of the Personal Data (including the Registry Operator and others who will receive the Personal Data from Registry Operator);

7.1.3. Which data are obligatory and which data, if any, are voluntary;

7.1.4. How the Registered Name Holder or data subject can access and, if necessary, rectify Personal Data held about them;

7.1.5. The identity and the contact details of the Registrar (as controller) and, where applicable, of the Registrar's representative in the European Economic Area;

7.1.6. The contact details of Registrar's data protection officer, where applicable;

7.1.7. The specified legitimate interest for Processing under Article 6(1)(f) of the GDPR;

7.1.8. The recipients or categories of recipients of the Personal Data, if any;

7.1.9. Where applicable, the fact that the Registrar intends to transfer Personal Data: (i) to a third country or international organization and the existence or absence of an adequacy decision by the Commission; or (ii) in the case of transfers referred to in Articles 46 or 47 of the GDPR, or the second subparagraph of Article 49(1) of the GDPR, reference to the appropriate or suitable safeguards and how to obtain a copy of them or where they have been made available.

7.1.10. The period for which the Personal Data will be stored, or if it is not possible to indicate the period, the criteria that will be used to determine that period;

7.1.11. The existence of the right to request from the Registrar access to, and rectification or erasure of Personal Data, or restriction of Processing of Personal Data concerning the Registered Name Holder or data subject, or to object to Processing, as well as the right to data portability;

7.1.12. Compliance with Article 6(1)(a) and Article 9(2)(a) of the GDPR, where the Registrar relies on consent of the Registered Name Holder for Processing;

7.1.13. The right of the Registered Name Holder or data subject to lodge a complaint with a relevant supervisory authority;

7.1.14. Whether the provision of Personal Data is a statutory or contractual requirement, or a requirement necessary to enter into a contract, as well as whether the Registered Name Holder is obliged to provide the Personal Data, and the possible consequences of failure to provide such Personal Data; and

7.1.15. The existence of automated decision-making, including profiling, referred to in Article 22(1) and (4) of the GDPR and, at least in those cases, meaningful information about the logic involved, as well as the significance and the envisaged consequences of such Processing for the data subject.

The requirements of this Section 7.1 shall supersede and replace the requirements of Section 3.7.7.4 of the Registrar Accreditation Agreement.

7.2.   **Additional Publication of Registration Data.**

7.2.1. As soon as commercially reasonable, Registrar MUST provide the opportunity for the Registered Name Holder to provide its Consent to publish the additional contact information outlined in Section 2.3 of Appendix A for the Registered Name Holder.

7.2.2. Registrar MAY provide the opportunity for the Admin/Tech and/or other contacts to provide Consent to publish additional contact information outlined in Section 2.4 of Appendix A.

7.2.3. Where such Consent is sought by Registrar, the request for Consent SHALL be presented in a manner which is clearly distinguishable from other matters (including other Personal Data Processed based on a legitimate interest). The request for Consent SHALL be in an intelligible and easily accessible form, using clear and plain language. The Registered Name Holder SHALL have the right to withdraw its Consent at any time. The withdrawal of Consent SHALL NOT affect the lawfulness of Processing based on Consent obtained before the withdrawal.

7.2.4. Registrar MUST publish the additional contact information outlined in Sections 2.3 and 2.4 of Appendix A for which it has received Consent.

7.3. **Uniform Domain Name Dispute Resolution Policy**. Registrar MUST comply with the additional requirements for the Rules for the Uniform Domain Name Dispute Resolution Policy set forth in Appendix E attached hereto ("**Appendix E**").

7.4. **Transfer Policy**. Registrar MUST comply with the supplemental procedures to the Transfer Policy set forth in Appendix G attached hereto ("**Appendix G**").

8. Miscellaneous

8.1. **No Third-party Beneficiaries**. This Temporary Specification will not be construed to create any obligation by either ICANN, Registry Operator, or Registrar to any non-party to this Temporary Specification, including Registered Name Holder.

8.2. **Modifications to Temporary Specification**. Implementation details of this Temporary Specification MAY by modified upon a two-thirds vote of the ICANN the Board to make adjustments based on further inputs from the Article 29 Working Party/European Data Protection Board, court order of a relevant court of competent jurisdiction concerning the GDPR, applicable legislation or regulation, and/or as a result of the Board-GAC Bylaws Consultation concerning GAC advice in the San Juan Communiqué about WHOIS and GDPR.

8.3.   **Severability**. This Temporary Specification SHALL be deemed to be severable; the invalidity or unenforceability of any term or provisions of this Temporary Specification SHALL NOT affect the validity or enforceability of the balance of this Temporary Specification or any other term hereof, which SHALL remain in full force and effect.

Appendix A: Registration Data Directory Services

1. Registration Data Directory Services

This Section modifies the relevant requirements of following: (i) the Registration Data Directory Service (WHOIS) Specification of the 2013 Registrar Accreditation Agreement; (ii) in the case of a Registry Agreement that is modeled after the Base Registry Agreement, Section 1 of Specification 4 of the Base Registry Agreement; (iii) in the case of a Registry Agreement that is not modeled on the Base Registry Agreement, the provisions of such Registry Agreement that are comparable to the provisions of Section 1 of Specification 4 of the Base Registry Agreement; and (iv) provision 10 of the Registry Registration Data Directory Services Consistent Labeling and Display Policy.

1.1.   Registrar and Registry Operator MUST operate a Registration Data Access Protocol (RDAP) service. ICANN and the community will define the appropriate profile(s) by 31 July 2018. ICANN will subsequently give notice to implement such service, and Registrar and Registry Operator SHALL implement the service no later than 135 days after being requested by ICANN. Registrar and Registry Operator MAY operate a pilot RDAP service before the date upon which an RDAP service is required.

1.2.   **RDDS Search Capabilities**

1.2.1.   Where search capabilities are permitted and offered, Registry Operator and Registrar MUST: (1) ensure such search capability is in compliance with applicable privacy laws or policies; (2) only permit searches on data otherwise available to the querying user, based on the user's access level; (3) only provide results otherwise available to the querying user based on the user's access level; and (4) ensure such search capability is otherwise consistent with the requirements of this Temporary Specification regarding access to public and non-public Registration Data.

1.2.2.   Where search capabilities are permitted and offered, Registry Operator and Registrar MUST offer search capabilities on the web-based Directory Service and the RDAP service (when implemented).

2. **Requirements for Processing Personal Data in Public RDDS Where Processing is Subject to the GDPR**

   2.1. Registry Operator (except where Registry Operator operates a "thin" registry) and Registrar MUST apply the requirements in Sections 2 and 4 of this Appendix to Personal Data included in Registration Data where:

      (i) the Registrar or Registry Operator is established in the European Economic Area (EEA) as provided in Article 3(1) GDPR and Process Personal Data included in Registration Data;

      (ii) the Registrar or Registry Operator is established outside the EEA and offers registration services to Registered Name Holders located in the EEA as contemplated by Article 3(2) GDPR that involves the Processing of Personal Data from registrants located in the EEA; or

      (iii) the Registrar or Registry Operator is located outside the EEA and Processes Personal Data included in Registration Data and where the Registry Operator or Registrar engages a Processor located within the EEA to Process such Personal Data.

   2.2. For fields that Sections 2.3 and 2.4 of this Appendix requires to be "redacted", Registrar and Registry Operator MUST provide in the value section of the redacted field text substantially similar to the following: "REDACTED FOR PRIVACY". Prior to the required date of implementation of RDAP, Registrar and Registry Operator MAY: (i) provide no information in the value section of the redacted field; or (ii) not publish the redacted field.

   2.3. In responses to domain name queries, Registrar and Registry Operator MUST treat the following Registrant fields as "redacted" unless the Registered Name Holder has provided Consent to publish the Registered Name Holder's data:

      ● Registry Registrant ID
      ● Registrant Name
      ● Registrant Street
      ● Registrant City
      ● Registrant Postal Code
      ● Registrant Phone
      ● Registrant Phone Ext
      ● Registrant Fax
      ● Registrant Fax Ext

2.4.   In responses to domain name queries, Registrar and Registry Operator MUST treat the following fields as "redacted" unless the contact (e.g., Admin, Tech) has provided Consent to publish the contact's data:

- Registry Admin/Tech/Other ID
- Admin/Tech/Other Name
- Admin/Tech/Other Organization
- Admin/Tech/Other Street
- Admin/Tech/Other City
- Admin/Tech/Other State/Province
- Admin/Tech/Other Postal Code
- Admin/Tech/Other Country
- Admin/Tech/Other Phone
- Admin/Tech/Other Phone Ext
- Admin/Tech/Other Fax
- Admin/Tech/Other Fax Ext

2.5.   In responses to domain name queries, in the value of the "Email" field of every contact (e.g., Registrant, Admin, Tech):

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.

2.5.1.1.   The email address and the URL to the web form MUST provide functionality to forward communications received to the email address of the applicable contact.

2.5.1.2.   Registrar MAY implement commercially reasonable safeguards to filter out spam and other form of abusive communications.

2.5.1.3.   It MUST NOT be feasible to extract or derive the email address of the contact from the email address and the URL to the web form provided to facilitate email communication with the relevant contact.

2.5.2.   Registry Operator MUST provide a message substantially similar to the following: "Please query the RDDS service of the Registrar of Record identified in this output for information on how to contact the Registrant, Admin, or Tech contact of the queried domain name."

2.6. Notwithstanding Sections 2.2, 2.3, 2.4, and 2.5 of this Appendix, in the case of a domain name registration where a privacy/proxy service used (e.g. where data associated with a natural person is masked), Registrar MUST return in response to any query full WHOIS data, including the existing proxy/proxy pseudonymized email.

3. Additional Provisions Concerning Processing Personal Data in Public RDDS Where Processing is not Subject to the GDPR

Registry Operator and Registrar MAY apply the requirements in Section 2 of this Appendix (i) where it has a commercially reasonable purpose to do so ,or (ii) where it is not technically feasible to limit application of the requirements as provided in Section 2.1 of this Appendix.

4. Access to Non-Public Registration Data

4.1. Registrar and Registry Operator MUST provide reasonable access to Personal Data in Registration Data to third parties on the basis of a legitimate interests pursued by the third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the Registered Name Holder or data subject pursuant to Article 6(1)(f) GDPR.

4.2. Notwithstanding Section 4.1 of this Appendix, Registrar and Registry Operator MUST provide reasonable access to Personal Data in Registration Data to a third party where the Article 29 Working Party/European Data Protection Board, court order of a relevant court of competent jurisdiction concerning the GDPR, applicable legislation or regulation has provided guidance that the provision of specified non-public elements of Registration Data to a specified class of third party for a specified purpose is lawful. Registrar and Registry Operator MUST provide such reasonable access within 90 days of the date ICANN publishes any such guidance, unless legal requirements otherwise demand an earlier implementation.

5. Publication of Additional Data Fields

Registrar and Registry Operator MAY output additional data fields, subject to the Data Processing requirements in **Appendix C**.

Appendix B: Supplemental Data Escrow Requirements

1.   Data Processing Requirements

Registry Operator and Registrar MUST respectively ensure that any data escrow agreement between Registry Operator and the Escrow Agent and/or Registrar and the Escrow Agent includes data Processing requirements consistent with Article 28 of the GDPR. Such Escrow Agent MUST provide sufficient guarantees to implement appropriate technical and organizational measures in such a manner that Processing will meet the requirements of the GDPR and ensure the protection of the rights of the data subject.

2.   International Transfers

In the course of performing the requirements under the agreement with the Escrow Agent, it may be necessary for the Escrow Agent to Process Personal Data in a country that is not deemed adequate by the European Commission per Article 45(1) of the GDPR. In such a case, the transfer and Processing will be on the basis of adequate safeguards permitted under Chapter V of the GDPR, including the use of Standard Contractual Clauses (2004/915/EC) (or its successor clauses), and the Escrow Agent and Controller MUST comply with such appropriate safeguards.

3.   ICANN Approval

Registry Operator MAY amend or restate its respective Data Escrow Agreement to incorporate data Processing terms and conditions substantially similar to the requirements provided at <<https://www.icann.org/resources/pages/gtld-registration-data-specs-en>> without any further approval of ICANN, provided that Registry Operator and Registrar MUST promptly deliver any such amended or restated Data Escrow Agreement to ICANN. Upon ICANN's receipt thereof, such amended or restated Data Escrow Agreement will be deemed to supplement or replace, as applicable, the approved Data Escrow Agreement that is attached as an appendix (if any) to Registry Operator's Registry Agreement.

4.   Additional Requirements

In addition to the above requirements, the data escrow agreement may contain other data Processing provisions that are not contradictory, inconsistent with, or intended to subvert the required terms provided above.

Appendix C: Data Processing Requirements

This Appendix sets out the framework for the Processing and sharing of Registration Data containing Personal Data between the parties as Data Controllers or Data Processors, as identified in the matrix below, and defines the principles and procedures that the parties SHALL adhere to and the responsibilities the parties owe to each other. The parties collectively acknowledge and agree that Processing necessitated by the purpose [identified in Section 4] is to be performed at different stages, or at times even simultaneously, within the Internet's complex environment, by the parties. Thus, this Appendix is required to ensure that where Personal Data may be accessed, such access will at all times comply with the requirements of the GDPR.

gTLD Processing Activity	Registrar Role	Registry Operator Role	ICANN Role
Collection of registration data from Registered Name Holder	Controller	Controller	Controller
Transfer of registration data from Registrar to Registry Operator or Registry Operator Back-end Service Provider	Processor	Controller	Controller
Transfer of registration data from Registry Operator to Data Escrow Agent	No role	Processor	Controller
Transfer of registration data from Registrar to Data Escrow Agent	Processor	No role	Controller
Transfer of registration data to ICANN Contractual Compliance	Processor	Processor	Controller
Transfer of registration data to Emergency Back-end Registry Operator (EBERO)	No role	Processor	Controller

gTLD Processing Activity	Registrar Role	Registry Operator Role	ICANN Role
Public RDDS/WHOIS	Controller	Controller	Controller
Disclosure of non-public RDDS/WHOIS to third parties	Controller	Controller	Controller
Data retention	No role	Processor	Controller

1. **Principles for Processing**

Each Controller will observe the following principles to govern its Processing of Personal Data contained in Registration Data, except as required by applicable laws or regulations. Personal Data SHALL:

1.1. only be Processed lawfully, fairly, and in a transparent manner in relation to the Registered Name Holders and other data subjects ("lawfulness, fairness, and transparency");

1.2. be obtained only for specified, explicit, and legitimate purposes (as outlined in Section 4 of this Temporary Specification), and SHALL NOT be further Processed in any manner incompatible with those purposes ("purpose limitation");

1.3. be adequate, relevant, and not excessive in relation to the purposes for which they are Processed ("data minimization");

1.4. be accurate and, if necessary, kept current, as appropriate to the purposes for which they are Processed ("accuracy");

1.5. not be kept in a form that permits identification of the Registered Name Holder and other data subjects for longer than necessary for the permitted purposes ("storage limitation"); and

1.6. be Processed in a manner that ensures appropriate security of the Personal Data, including protection against unauthorized or unlawful Processing and against accidental loss, destruction or damage, using appropriate technical or organizational measures ("integrity and confidentiality").

Each Registrar and Registry Operator SHALL be responsible for, and be able to demonstrate compliance with principles (1.1) to (1.6) ("accountability"). The Registrar or Registry Operator SHALL inform ICANN immediately if such Registrar or Registry Operator (i) cannot abide by the Processing principles outlined in Section 1 of this Appendix, or (ii) receives a complaint by a Registered Name Holder or other data subject that the Registrar or Registry Operator has failed to abide by such principles.

2. Lawfulness of Processing

For Personal Data Processed in connection with the Registration Data Directory Services, such Processing will take place on the basis of a legitimate interests of the Controller or of the third party or parties to whom the Personal Data are disclosed, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of Personal Data, in particular where the data subject is a child. For other Personal Data collected for other purposes, such Personal Data SHALL NOT be Processed unless a legal basis specified under Article 6(1) GDPR applies.

3. Specific Controller Processing requirements

In addition to the general principles and requirements for lawful Processing, each Controller SHALL comply with the following specific requirements:

3.1. **Implementing appropriate measures.** Implementing appropriate technical and organizational measures to ensure and to be able to demonstrate the Processing is performed in compliance with the GDPR, such as appropriate data protection policies, approved code of conducts or approved certification mechanisms. Such measures SHALL be reviewed regularly and updated when necessary by the Controller. The parties acknowledge and agree that they are responsible for maintaining appropriate organizational and security measures to protect such Personal Data shared between the parties in accordance with applicable laws. Appropriate organizational and security measures are further enumerated in Section 3.8 of this Appendix, and generally MUST include:

3.1.1. Measures to ensure that only authorized individuals for the purposes of this Appendix can access the Personal Data;

3.1.2. The pseudonymisation and encryption of the Personal Data, where necessary or appropriate;

3.1.3.   The ability to ensure continued confidentiality, integrity, availability and resilience of its processing systems and services;

3.1.4.   The ability to restore the availability and access to Personal Data in a timely manner;

3.1.5.   A process for regularly testing, assessing, and evaluating the effectiveness of technical and organizational measures for ensuring the security of the processing of Personal Data; and

3.1.6.   Measures to identify vulnerabilities with regard to the processing of Personal Data in its systems;

3.2.   **Engaging only selected Processors.** Engaging only selected Processors and implementing a contract with each Processor that sets out the subject-matter and duration of the Processing, the nature and purpose of the Processing, the type of Personal Data and categories of data subjects and the obligations and rights of the Controller. The engagement of Processor must comply with Article 28 of the GDPR;

3.3.   **Designating a Data Protection Officer.** Designating a "Data Protection Officer" where required by Article 37 of the GDPR or Member State national data protection law;

3.4.   **Maintaining a record of Processing.** Maintaining a record of the Processing activities under the Controller's responsibility in accordance with Article 30 of the GDPR;

3.5.   **Providing transparent information.** Taking appropriate measures to provide any information referred to in Articles 13 and 14 of the GDPR and any communication under Articles 15 to 22 and 34 of the GDPR relating to Processing to the data subject in a concise, transparent, intelligible and easily accessible form, using clear and plain language, which SHALL specifically include the following obligations:

3.5.1.   The parties SHALL ensure that their privacy notices are clear and provide sufficient information to Data Subjects in order for them to understand what of their Personal Data the Parties are sharing, the circumstances in

which it will be shared, the purposes for the data sharing and either the identity with whom the data is shared or a description of the type of organization that will receive the Personal Data;

3.5.2.   The parties undertake to inform Data Subjects of the purposes for which it will process their Personal Data and provide all of the information that it must provide in accordance with applicable laws, to ensure that the Data Subjects understand how their Personal Data will be processed by the Controller.

3.6.   **Facilitating of the exercise of data subject rights.** Facilitating the exercise of data subject rights under Articles 15 to 22 of the GDPR. In the cases referred to in Article 11(2) of the GDPR, the Controller SHALL NOT refuse to act on the request of the data subject for exercising his or her rights under Articles 15 to 22 of the GDPR, unless the Controller demonstrates that it is not in a position to identify the data subject;

3.7.   **Implementing measures for data protection by design and by default.** Implementing appropriate technical and organizational measures, both at the time of the determination of the means for Processing and at the time of the Processing itself, which are designed to implement data protection principles, in an effective manner and to integrate the necessary safeguards into the Processing in order to meet the requirements of the GDPR and to protect the rights of data subjects. Implementing appropriate technical and organizational measures for ensuring that, by default, only Personal Data which are necessary for each specific purpose of the Processing are Processed.

3.8.   **Implementing appropriate security measures.** Implementing appropriate technical and organizational measures to ensure a level of security appropriate to the risk of data Processing, taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risks of varying likelihood and severity for the rights and freedoms of natural persons. Appropriate technical and organizational measures to protect the Personal Data shared against unauthorized or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure, MAY include, but not limited to:

3.8.1.   Ensuring IT equipment, including portable equipment is kept in lockable areas when unattended;

3.8.2.   Not leaving portable equipment containing the Personal Data unattended;

3.8.3.   Ensuring use of appropriate secure passwords for logging into systems or databases containing Personal Data shared between the parties;

3.8.4.   Ensuring that all IT equipment is protected by antivirus software, firewalls, passwords and suitable encryption devices;

3.8.5.   Using industry standard 256-bit AES encryption or suitable equivalent where necessary or appropriate;

3.8.6.   Limiting access to relevant databases and systems to those of its officers, staff, agents, vendors and sub-contractors who need to have access to the Personal Data, and ensuring that passwords are changed and updated regularly to prevent inappropriate access when individuals are no longer engaged by the party;

3.8.7.   Conducting regular threat assessment or penetration testing on systems.

3.8.8.   Ensuring all authorized individuals handling Personal Data have been made aware of their responsibilities with regards to handling of Personal Data.

3.9.   **Developing procedures for breach notification.** Developing procedures for breach notification to ensure compliance with the obligations pursuant to Articles 33-34 of the GDPR. Any notifications provided in connection with Articles 33-34 of the GDPR SHALL also be provided to ICANN. Where a party is not the Data Controller, it must communicate any data security breach immediately after discovery thereof and will provide immediate feedback about any impact this incident may/will have on the Controller and any Personal Data shared with the Controller. Such notification will be provided as promptly as possible.

3.10.   **Observing conditions for international data transfers.** Observing conditions for international data transfers so that any transfer of Personal Data which are

undergoing Processing or are intended for Processing after transfer to a third country or to an international organization SHALL take place only if the conditions laid down in Chapter V of the GDPR are complied with, including for onward transfers of Personal Data from the third country or an international organization to another third country or to another international organization. A party may only transfer Registration Data including Personal Data relating to EU individuals to outside of the EU (or if such Personal Data is already outside of the EU, to any third party also outside the EU), in compliance with the terms this Section 3.10, and the requirements of applicable laws.

3.11.   **Cooperating with Supervisory Authorities.** Cooperating with Supervisory Authorities, on request, in the performance of their tasks.

3.12.   **Transfers**. Transfers of Personal Data include any sharing of Personal Data, and shall include, but is not limited to, the following:

    3.12.1.   Transfers amongst the Parties for the purposes contemplated in this Temporary Specification or under any of the applicable Registry Agreement or Registrar Accreditation Agreement;

    3.12.2.   Sharing of the Personal Data with any other third party for the provisioning of the purposes;

    3.12.3.   Publication of the Personal Data via any medium, including, but not limited to in the public WHOIS output;

    3.12.4.   The transfer and storage by the receiving party of any Personal Data from within the EEA to servers outside the EEA; and

    3.12.5.   Otherwise granting any third party located outside the EEA access rights to the Personal Data.

Appendix D: Uniform Rapid Suspension

This Appendix contains supplemental requirements for the 17 October 2013 URS High Level Technical Requirements for Registries and Registrars and URS Rules effective 28 June 2013.

1. **URS High Level Technical Requirements for Registry Operator and Registrar**

    1.1. **Registry Operator Requirement**: The Registry Operator (or appointed BERO) MUST provide the URS provider with the full Registration Data for each of the specified domain names, upon the URS provider notifying the Registry Operator (or appointed BERO) of the existence of a complaint, or participate in another mechanism to provide the full Registration Data to the Provider as specified by ICANN. If the gTLD operates as a "thin" registry, the Registry Operator MUST provide the available Registration Data to the URS Provider.

    1.2. **Registrar Requirement**: If the domain name(s) subject to the complaint reside on a "thin" registry, the Registrar MUST provide the full Registration Data to the URS Provider upon notification of a complaint.

2. **URS Rules**

Complainant's complaint will not be deemed defective for failure to provide the name of the Respondent (Registered Name Holder) and all other relevant contact information required by Section 3 o the URS Rules if such contact information of the Respondent is not available in registration data publicly available in RDDS or not otherwise known to Complainant. In such an event, Complainant may file a "Doe" complaint and the Examiner shall provide the relevant contact details of the Registered Name Holder after being presented with a "Doe" complaint.

Appendix E: Uniform Domain Name Dispute Resolution Policy

This Appendix contains supplemental requirements for the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules").

1. **Uniform Domain Name Dispute Resolution Policy**

    1.1.   **Registrar Requirement**: The Registrar MUST provide the UDRP provider with the full Registration Data for each of the specified domain names, upon the UDRP provider notifying the Registrar of the existence of a complaint, or participate in another mechanism to provide the full Registration Data to the Provider as specified by ICANN.

    1.2.   Complainant's complaint will not be deemed defective for failure to provide the name of the Respondent (Registered Name Holder) and all other relevant contact information required by Section 3 o the UDRP Rules if such contact information of the Respondent is not available in registration data publicly available in RDDS or not otherwise known to Complainant. In such an event, Complainant may file a "Doe" complaint and the Provider shall provide the relevant contact details of the Registered Name Holder after being presented with a "Doe" complaint.

Appendix F: Bulk Registration Data Access to ICANN

This Appendix replaces the requirement in: (i) Section 3.1.1 of Specification 4 of each Registry Agreement that is modeled on the Base Registry Agreement; and (ii) the relevant provision in a Registry Agreement not based on the Base Registry Agreement to provide Bulk Registration Data Access to ICANN (also called "Whois Data Specification – ICANN" in some gTLD agreements).

1. **Contents.** Registry Operator MUST only provide the following data for all registered domain names: domain name, domain name repository object id (roid), Registrar ID (IANA ID), statuses, last updated date, creation date, expiration date, and name server names. For sponsoring registrars, Registry Operator MUST only provide: registrar name, registrar ID (IANA ID), hostname of registrar Whois server, and URL of registrar.

Appendix G: Supplemental Procedures to the Transfer Policy

This Appendix provides supplemental procedures for the [Transfer Policy](#) applicable to all ICANN-accredited Registrars.

1. Until such time when the RDAP service (or other secure methods for transferring data) is required by ICANN to be offered, if the Gaining Registrar is unable to gain access to then-current Registration Data for a domain name subject of a transfer, the related requirements in the Transfer Policy will be superseded by the below provisions:

   1.1. The Gaining Registrar is not REQUIRED to obtain a Form of Authorization from the Transfer Contact.

   1.2. The Registrar of Record MAY deny a transfer if no response is received from the Registered Name Holder or Administrative Contact within the time allotted by the Transfer Policy.

   1.3. The Registrant MUST independently re-enter Registration Data with the Gaining Registrar. In such instance, the Gaining Registrar is not REQUIRED to follow the Change of Registrant Process as provided in Section II.C. of the Transfer Policy.

2. As used in the Transfer Policy:

   2.1. The term "Whois data" SHALL have the same meaning as "Registration Data".

   2.2. The term "Whois details" SHALL have the same meaning as "Registration Data".

   2.3. The term "Publicly accessible Whois" SHALL have the same meaning as "RDDS".

   2.4. The term "Whois" SHALL have the same meaning as "RDDS".

3. Registrar and Registry Operator SHALL follow best practices in generating and updating the "AuthInfo" code to facilitate a secure transfer process.

4. Registry Operator MUST verify that the "AuthInfo" code provided by the Gaining Registrar is valid in order to accept an inter-registrar transfer request.

Annex: Important Issues for Further Community Action

The purpose of this Annex is to set forth implementation issues raised during the course of development of this Temporary Specification for which the ICANN Board encourages the community to continue discussing so that they may be resolved as quickly as possible after the effective date of the Temporary Specification. This Annex does not create new or modified requirements for Registrar or Registry Operator, nor is it intended to direct the scope of the Policy Development Process, which will be initiated as a result of the Board's adoption of this Temporary Specification.

1. Pursuant to Section 4.4, continuing community work to develop an accreditation and access model that complies with GDPR, while recognizing the need to obtain additional guidance from Article 29 Working Party/European Data Protection Board.

2. Addressing the feasibility of requiring unique contacts to have a uniform anonymized email address across domain name registrations at a given Registrar, while ensuring security/stability and meeting the requirements of Section 2.5.1 of Appendix A.

3. Developing methods to provide potential URS and UDRP complainants with sufficient access to Registration Data to support good-faith filings of complaints.

4. Consistent process for continued access to Registration Data, including non-public data, for users with a legitimate purpose, until the time when a final accreditation and access mechanism is fully operational, on a mandatory basis for all contracted parties.

5. Distinguishing between legal and natural persons to allow for public access to the Registration Data of legal persons, which are not in the remit of the GDPR.

6. Limitations in terms of query volume envisaged under an accreditation program balanced against realistic investigatory cross-referencing needs.

7. Confidentiality of queries for Registration Data by law enforcement authorities.

Implementation Notes

1.   **Background on Board Adoption of Temporary Specification.**

   1.1.   **[TENTATIVE – PENDING BOARD ACTION]** [On ▆▆ May 2018, the 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.] The Temporary Specification provides modifications to existing requirements in the Registrar Accreditation and Registry Agreements to bring them into compliance with the European Union's General Data Protection Regulation (GDPR). Absent these modifications, ICANN, Registry Operators, and Registrars would not be able to comply with both the law and ICANN agreements when the GDPR goes into effect on 25 May 2018. This would result in the inability of ICANN to enforce its contracts. This would also result in each Registry Operator and Registrar making their own determination regarding what gTLD Registration Data should be collected, transferred and published, leading to a fragmentation of the globally distributed WHOIS system. Fragmentation of the WHOIS system would jeopardize the availability of Registration Data, which is essential to ensuring the security and stability of the Internet, including to mitigate attacks that threaten the stable and secure operation of the Internet. As such, the Temporary Specification is needed prior to 25 May 2018 to preserve the security and stability of registry services, registrar services, and of the Domain Name System (DNS).

   1.2.   See the Advisory Statement: Temporary Specification for gTLD Registration Data for additional information on how the Temporary Specification preserves the WHOIS system in the context of security and stability, as well as steps ICANN has taken to build consensus support and to ensure that the Temporary Specification complies with the GDPR and addresses other public policy considerations.

2. **References**

   2.1.   gTLD Registration Dataflow Matrix and Information. With the help from Registrars and Registry Operators as well as interested stakeholders, ICANN collected information needed to help evaluate GDPR compliance in the context of registry, registrar, and registrant data. This information was used to inform legal analysis, as well as to engage with data protection authorities.

2.2.   [Hamilton Memoranda](#). At the request of the community, ICANN org commissioned European law firm Hamilton to produce three memoranda outlining the GDPR's impact on gTLD registration directory services. The memoranda concluded that WHOIS would have to change in light of the law, responded to community questions about the law, and provided examples of how WHOIS services may change to comply with the GDPR.

2.3.   [Statement from ICANN Contractual Compliance](#). On 2 November 2017, ICANN issued a statement from ICANN's Contractual Compliance Department regarding the ability of Registry Operators and Registrars to comply with their WHOIS and other contractual requirements related to domain name registration data in light of the European Union's General Data Protection Regulation (GDPR).

2.4.   [Community-Proposed Models for GDPR Compliance](#). In response to the Statement from ICANN's Contractual Compliance Department, several proposed models for GDPR compliance were submitted by various stakeholders.

2.5.   [ICANN Organization's Three Proposed Interim Compliance Model](#). On 12 January 2018, ICANN org published three proposed interim models for compliance and sought community input. The models reflected discussions from across the community and with data protection authorities, legal analyses and the proposed community models received to date.

2.6.   [ICANN Org's Proposed Interim GDPR Compliance Model (Calzone)](#). On 28 February 2018, ICANN org published the Proposed Interim GDPR Compliance Model (Calzone), which incorporated input from the community and feedback from data protection authorities. The Calzone provides a high-level summary of the proposed model. In addition, ICANN org also published an updated [Working Draft Non-Paper](#) that compares ICANN- and community-proposed models.

2.7.   [ICANN Org's Proposed Interim GDPR Compliance Model (Cookbook)](#). On 8 March 2018, ICANN Org published the Cookbook that contains the Proposed Interim GDPR Compliance Model and legal justification for collection and use of the WHOIS data included in the Calzone.

3. **Legal Basis and Purposes of Processing gTLD Registration Data Elements**

Under the GDPR, Personal Data may only be collected for specified, explicit and legitimate purposes and not further Processed in a manner that is incompatible with those purposes. The legal basis and purposes of Processing gTLD Registration Data elements are detailed at <<https://www.icann.org/resources/pages/gtld-registration-data-specs-en)>>