

# ICANN | GNSO

Generic Names Supporting Organization

## **GNSO Council Recommendations Report to the ICANN Board - Regarding Adoption of the Final Recommendations from the Expedited Policy Development Process on the Temporary Specification for gTLD Registration Data**

29 March 2019

### Status of This Document

---

This is the GNSO Council Recommendations Report to the ICANN Board following the adoption by the GNSO Council of the Final Recommendations of the Expedited Policy Development Process on the Temporary Specification for gTLD Registration Data.

## 1. Executive Summary

On 4 March 2019, the GNSO Council [voted](#) to approve with the required GNSO Supermajority support all the recommendations contained in the [Final Report](#) from the Team that had been chartered to conduct an Expedited Policy Development Process (EPDP) on the Temporary Specification for gTLD Registration Data. This Recommendations Report is being sent to the ICANN Board for its review of the EPDP recommendations, which the GNSO Council recommends be adopted by the ICANN Board. Please see Annex A for a summary of all the approved recommendations.

The EPDP Team on the Temporary Specification for gTLD Registration Data has been [chartered](#) “to determine if the Temporary Specification for gTLD Registration Data should become an ICANN Consensus Policy, as is or with modifications, while complying with the GDPR and other relevant privacy and data protection law.” As part of its deliberations on this issue, the EPDP Team was tasked to consider, at a minimum, the specifically-identified questions related to the Temporary Specification, which were outlined in the EPDP Charter. These questions related to the different sections of the Temporary Specification, and included, for example, the purposes for processing gTLD registration data, and the collection, transfer, and publication of gTLD registration data as outlined in the Temporary Specification.

The EPDP Team published an [Initial Report](#) for public comment in November 2018. Following an extensive review of all the public comments received, the EPDP Team finalized its recommendations and completed its [Final Report](#), which was submitted to the GNSO Council on 20 February 2019.

The policy recommendations, if approved by the Board, will impose obligations on contracted parties. The GNSO Council’s vote in favor of these items satisfies the voting threshold required by Section 11.3(i)(xv) of the ICANN Bylaws regarding the formation of consensus policies. Under the ICANN Bylaws, the Council’s Supermajority support for the EPDP recommendations obligates the Board to adopt the recommendations unless, by a vote of more than two-thirds, the Board determines that the policy is not in the best interests of the ICANN community or ICANN.

**2. If a successful GNSO Vote was not reached, a clear statement of all positions held by Council members. Each statement should clearly indicate (i) the reasons underlying each position and (ii) the Constituency(ies) or Stakeholder Group(s) that held that position.**

While the GNSO Council approved the EPDP Team’s Final Report with the required Supermajority support, the vote was not unanimous. Accordingly, please find a link to the [meeting minutes](#), wherein you may refer to additional statements made by Council members on behalf of their respective groups.

**3. An analysis of how the issue(s) would affect each Constituency or Stakeholder Group, including any financial impact on the Constituency or Stakeholder Group.**

Policy recommendations regarding the collection, transfer, and disclosure of gTLD registration data will affect a number of Constituencies and Stakeholder Groups. Accordingly, the EPDP Team included members from all the GNSO’s Stakeholder Groups and Constituencies within the composition of the EPDP Team. In recognition of the effect on many stakeholders within the ICANN Community, the GNSO Council chose to invite all Advisory Committees and Supporting Organizations to participate in the EPDP Team. Following receipt of an invitation, the At-Large Advisory Committee, the Governmental Advisory

Committee, and the Security and Stability Advisory Committee chose to participate. The Final Report also includes, where provided, statements from the participating groups. Although not every group supported every recommendation, all but two recommendations were still deemed to have the consensus support of the EPDP Team.

The GNSO's Constituencies and Stakeholder Groups were given the opportunity to provide additional statements, which were annexed to the Final Report.

In particular, the Business Constituency and Intellectual Property Constituency noted the importance of reasonable consideration by contracted parties of requests for lawful disclosure of non-public registration data, including requests made within the context of consumer protection, cybersecurity, intellectual property, or law enforcement within the lawful disclosure purpose (Purpose 2).

The Security and Stability Advisory Committee noted, contrary to the text of Recommendations 16 and 17, that registrars should be required to differentiate based on geographic location and between natural and legal persons after a suitable implementation period. This request for differentiation is based on a balancing of cost to contracted parties with the costs on the parties who rely upon domain registration data for the wide array of legitimate purposes.

The At-Large Advisory Committee noted the following concerns that were not adequately addressed by the EPDP Team:

- Maximizing access to RDDS information for those involved with cybersecurity and consumer protection;
- Maximizing stability and resiliency of a trustworthy DNS;
- Protecting and supporting individual Internet users; and
- Protecting Registrants.

The Non-Commercial Stakeholder Group also noted concerns with Purpose 2, noting that disclosure to third parties is not a valid ICANN purpose for processing domain name registrants' data and could ultimately be overruled by the law. The Non-Commercial Stakeholder Group also noted concerns with Purpose 7, as it could result in an increase to the number of data registration elements in the RDDS or WHOIS. The Non-Commercial Stakeholder Group also notes that rules with respect to RDDS should be universally applied; therefore, Recommendation 17, which permits but does not require registrars to apply geographic differentiation to registered name holders, does not align with a uniform, global Internet.

The Internet Service Providers and Connectivity Providers Constituency noted concerns with consent being given in a compliant fashion and noted the current language in the language Final Report may not address consent in a GDPR-compliant manner.

The Registries Stakeholder Group noted concerns with the workbooks in Annex D being incorporated by reference into the Final Report. It also noted concerns with Recommendation 27, noting the language does not reflect the consensus of the EPDP Team, and additionally noted concerns with Recommendation 2, noting it is out of scope for this EPDP.

The Governmental Advisory Committee noted concerns that the Final Report does not sufficiently recognize the benefits of the WHOIS database.

The implementation of these recommendations will result in changes to registry and registrar systems, and accordingly, the costs to contracted parties were discussed by the EPDP Team during the drafting of the recommendations.

The above summary represents some noted points of impact among the affected Constituencies and Stakeholder Groups. Please refer to the full statements in Annex G of the [Final Report](#) for further information.

#### **4. An analysis of the period of time that would likely be necessary to implement the policy.**

Recognizing that the Temporary Specification expires on 20 May 2019, there is a need for a vehicle to implement interim requirements recommended by the EPDP Team to avoid a gap. In Recommendation 28, “[t]he EPDP Team recommends that until February 29, 2020, registries and registrars are required EITHER to comply with this gTLD Registration Data Policy OR continue to implement measures consistent with the Temporary Specification (as adopted by the ICANN Board on 17 May 2018, and expired on 25 May 2019).”

The other timeline consideration is the effective date of 29 Feb 2020, which was identified in Recommendation 28 of the Final Report. ICANN org must assess in detail, in consultation with the Implementation Review Team, how to meet this deadline. Initial discussions already took place at ICANN64. ICANN org has noted the target of 29 February 2020 in its initial implementation planning. The implementation may require a phased approach to meet that deadline.

#### **5. The advice of any outside advisors relied upon, which should be accompanied by a detailed statement of the advisor’s (i) qualifications and relevant experience; and (ii) potential conflicts of interest.**

During the course of its work, the EPDP Team recognized some of the issues under discussion required the expertise of legal counsel. A sub-group of the EPDP Team, the Legal Committee, worked together to identify the preferred qualifications and experience the Team was seeking. ICANN Org, in following its standard procedure which includes a conflict of interest assessment, identified Ruth Boardman of Bird & Bird as the outside legal counselor dedicated to this effort. Ruth Boardman jointly heads the International Privacy and Data Protection Group of Bird & Bird.

The [full legal memos](#) are available for review, but the topics which received further guidance from legal counsel have been provided below:

1. Applicability of GDPR Art. 6.1.b reference “to which the data subject is party” and “necessary for performance of a contract”.
2. Potential liability of registered name holder’s incorrect self-identification of a natural or legal person, which ultimately results in public display of personal data
3. Meaning of “informing” the data subject with respect to provision of separate administrative and technical contact
4. Accuracy of data requirements under GDPR

5. Is the data provided by the Registered Name Holder ("RNH") for the "City" field in the RNH's address personal data?

The EPDP Team also reviewed the [European Data Protection Board's \("EDPB"\) advice](#) on the Temporary Specification in detail.

Lastly, the following [list of resources](#), which includes previously-received guidance on RDDS, privacy law, ICANN policies, et. al., was made available for EPDP Team review and reference.

## **6. The Final Report submitted to the GNSO Council**

The Final Report of the EPDP Team was submitted to the GNSO Council on 20 February 2019 and can be found here in full: [Final Report](#). The recommendations are included as an annex to this report.

Translations of the Final Report have been requested in all the other official languages of the United Nations.

## **7. A copy of the minutes of the Council deliberation on the policy issue, including all opinions expressed during such deliberation, accompanied by a description of who expressed such opinions.**

Please refer to the GNSO Council's resolution adopting the final recommendations from the PDP Working Group at <https://gns0.icann.org/en/council/resolutions#201903> as well as the transcript and minutes from that Council meeting, at <https://gns0.icann.org/sites/default/files/file/field-file-attach/transcript-special-council-04mar19-en.pdf> and <https://gns0.icann.org/sites/default/files/file/field-file-attach/minutes-special-council-04mar19-en.pdf> respectively.

## **8. Consultations undertaken**

### External

As mandated by the GNSO's PDP Manual, the EPDP Team reached out shortly after its initiation to ICANN's Supporting Organizations and Advisory Committees as well as the GNSO's Stakeholder Groups and Constituencies to seek their input on the Charter questions. See <https://community.icann.org/display/EOTSFGRD/Request+for+Early+Input+-+1+August+2018> for all the responses received (these were from the Business Constituency, the Intellectual Property Constituency, the Governmental Advisory Committee, the Non-Commercial Stakeholder Group, the Registrars Stakeholder Group, the Registries Stakeholder Group, the Security and Stability Advisory Committee, and the At-Large Advisory Committee).

Also as mandated by the GNSO's PDP Manual, the EPDP Team's Initial Report was published for public comment following its release on 21 November 2019 (see: <https://www.icann.org/public-comments/epdp-gtld-registration-data-specs-initial-2018-11-21-en>). All the public comments received were compiled into a uniform Public Comment Review Tool and reviewed by the Working Group (see <https://community.icann.org/display/EOTSFGRD/Public+Comment+Review+Tool>).

In addition, the Working Group held three face-to-face meetings: the first meeting was held in Los Angeles from 24 – 26 September 2018, the second meeting was held during the ICANN public meeting in Barcelona from 20 – 25 October 2018, and the third meeting was held in Toronto from 16 – 18 January 2019. The EPDP Team’s second face-to-face meeting in Barcelona included open community sessions. Transcripts, documents, and recordings of all EPDP Team meetings can be found on the EPDP Team wiki space at:

<https://community.icann.org/display/EOTSFGRD/EPDP+on+the+Temporary+Specification+for+gTLD+Registration+Data> .

### Internal

In recognition of the condensed timeline the EPDP Team would be working under, the GNSO Council chose to invite two liaisons from ICANN Organization to participate directly within the EPDP Team: one liaison from ICANN’s Legal Team and one liaison from ICANN’s Global Domains Division. The ICANN Org liaisons attended all EPDP Team calls, joined the Team for its face-to-face meetings, and provided background information and [answers to questions](#) from the EPDP Team.

### **9. Summary and analysis of Public Comment Forum to provide input on the Final Recommendations from the Expedited Policy Development Process on the Temporary Specification for gTLD Registration Data as adopted by the GNSO Council prior to ICANN Board consideration.**

A public comment forum was opened on 4 March 2019 to solicit feedback on the recommendations prior to ICANN Board consideration: <https://www.icann.org/public-comments/epdp-recs-2019-03-04-en>. At the time of the publication of this report, the public comment forum had not closed yet.

### **10. Impact/implementation considerations from ICANN staff**

The internal ICANN org implementation team has formed and has begun to review the recommendations to analyze the implementation requirements. ICANN org considers the scope of effort required for this implementation to be significant and extensive.

## **Annex A: Final Recommendations from the EPDP on the on the Temporary Specification for gTLD Registration Data (extracted from the Executive Summary of the Final Report)**

The EPDP Team has reached CONSENSUS on all the following recommendations:

### **EPDP Team Recommendation #1.**

The EPDP Team recommends that the following ICANN Purposes for processing gTLD Registration Data form the basis of the new ICANN policy:

1. a. In accordance with the relevant registry agreements and registrar accreditation agreements, activate a registered name and allocate it to the Registered Name Holder.
1. b. Subject to the Registry and Registrar Terms, Conditions and Policies and ICANN Consensus Policies:
  - (i) Establish the rights of a Registered Name Holder in a Registered Name; and
  - (ii) Ensure that a Registered Name Holder may exercise its right in the use, maintenance and disposition of the Registered Name.;
2. Contributing to the maintenance of the security, stability, and resiliency of the Domain Name System in accordance with ICANN’s mission through enabling responses to lawful data disclosure requests.<sup>1</sup>
3. Enable communication with the Registered Name Holder on matters relating to the Registered Name;
4. Provide mechanisms for safeguarding Registered Name Holders' Registration Data in the event of a business or technical failure of a Registrar or Registry Operator, or unavailability of a Registrar or Registry Operator, as described in the RAA and RA, respectively;
5.
  - i) Handle contractual compliance monitoring requests and audit activities consistent with the terms of the Registry agreement and the Registrar accreditation agreements and any applicable data processing agreements, by processing specific data only as necessary;
  - ii) Handle compliance complaints initiated by ICANN, or third parties consistent with the terms of the Registry agreement and the Registrar accreditation agreements.
6. Operationalize policies for the resolution of disputes regarding or relating to 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), namely, the UDRP, URS, PDDRP, RRDRP, and the TDRP; and

---

<sup>1</sup> Purpose 2 should not preclude disclosure in the course of investigating intellectual property infringement.

7. Enabling validation to confirm that Registered Name Holder meets gTLD registration policy eligibility criteria voluntarily adopted by Registry Operator and that are described or referenced in the Registry Agreement for that gTLD.<sup>2</sup>

### **EPDP Team Recommendation #3.**

In accordance with the EPDP Team Charter and in line with Purpose #2, the EPDP Team undertakes to make a recommendation pertaining to a standardised model for lawful disclosure of non-public Registration Data (referred to in the Charter as 'Standardised Access') now that the gating questions in the charter have been answered. This will include addressing questions such as:

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

In this context, the EPDP team will consider amongst other issues, disclosure in the course of intellectual property infringement and DNS abuse cases.<sup>3</sup> There is a need to confirm that disclosure for legitimate purposes is not incompatible with the purposes for which such data has been collected.

### **EPDP Team Recommendation #4.**

The EPDP Team recommends that requirements related to the accuracy of registration data under the current ICANN contracts and consensus policies shall not be affected by this policy.<sup>4</sup>

### **EPDP Team Recommendation #5.**

The EPDP Team recommends that the data elements listed below (as illustrated in the

---

<sup>2</sup> The EPDP Team's approval of Purpose 7 does not prevent and should not be interpreted as preventing Registry Operators from voluntarily adopting gTLD registration policy eligibility criteria that are not described or referenced in their respective Registry Agreements.

<sup>3</sup> The EPDP recognizes that ICANN has a responsibility to foster the openness, interoperability, resilience, security and/or stability of the DNS in accordance with its stated mission (citation required). It may have a purpose to require actors in the ecosystem to respond to data disclosure requests that are related to the security, stability and resilience of the system. The proposed Purpose 2 in this report is a placeholder, pending further legal analysis of the controller/joint controller relationship, and consultation with the EDPB. The EPDP recommends that further work be done in phase 2 on these issues, including a review of a limited purpose related to the enforcement of contracted party accountability for disclosure of personal data to legitimate requests.

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



data elements workbooks in Annex D) are required to be collected by registrars. In the aggregate, this means that the following data elements are to be collected<sup>5</sup> where some data elements are automatically generated and, as indicated below, in some cases it is optional for the registered name holder to provide those data elements:

Data Elements (Collected & Generated\*) Collection

Data Elements (Collected & Generated*)	Collection Logic
Domain Name	Green
Registrar Whois Server*	
Registrar URL*	
Registrar Registration Expiration Date*	Yellow
Registrar*	Green
Registrar IANA ID*	
Registrar Abuse Contact Email*	
Registrar Abuse Contact Phone*	
Reseller*	Yellow
Domain Status(es)*	Green
Registrant Fields	Light Green
• Name	Green
• Organization	Yellow
• Street	Green
• City	
• State/province	
• Postal code	
• Country	
• Phone	
• Phone ext	Yellow
• Fax	
• Fax ext	
• Email	Green
Tech Fields	Light Green
• Name	Yellow
• Phone	
• Email	
Name Server(s)	Yellow
DNSSEC	

<sup>5</sup> For those data elements marked as “Optional”, these are either optional for the Registrar to offer or optional for the RNH to provide. In both cases, if data is provided, it must be processed.

Name Server IP Address(es)	
<ul style="list-style-type: none"> <li>Additional data elements as identified by Registry Operator in its registration policy, such as (i) status as Registry Operator Affiliate or Trademark Licensee [.MICROSOFT]; (ii) membership in community [.ECO]; (iii) licensing, registration or appropriate permits [.PHARMACY, .LAW] place of domicile [.NYC]; (iv) business entity or activity [.BANK, .BOT]</li> </ul>	

Required   
Optional 

For further details, see complete data elements matrix.








For the purpose of the Technical contact, which is optional for the Registered Name Holder to complete (and if the Registrar provides this option), Registrars are to advise the Registered Name Holder at the time of registration that the Registered Name Holder is free to (1) designate the same person as the registrant (or its representative) as the technical contact; or (2) provide contact information which does not directly identify the technical contact person concerned.

**EPDP Team Recommendation #6.**

The EPDP Team recommends that, as soon as commercially reasonable, Registrar must provide the opportunity for the Registered Name Holder to provide its Consent to publish redacted contact information, as well as the email address, in the RDS for the sponsoring registrar.

**EPDP Team Recommendation #7.**

The EPDP Team recommends that the specifically-identified data elements under “[t]ransmission of registration data from Registrar to Registry”, as illustrated in the aggregate data elements workbooks, must be transferred from registrar to registry provided an appropriate legal basis exists and data processing agreement is in place. In the aggregate, these data elements are:

Data Elements (Collected & Generated*)	Transfer Logic
Domain Name	
Registrar Whois Server*	
Registrar URL*	
Registrar Registration Expiration Date*	
Registrar*	
Registrar IANA ID*	
Registrar Abuse Contact Email*	

Registrar Abuse Contact Phone*	Required
Reseller*	Optional
Domain Status(es)*	Required
Registrant Fields	
• Name	Optional
• Organization	
• Street	
• City	
• State/province	
• Postal code	
• Country	
• Phone	
• Phone ext	
• Fax	
• Fax ext	
• Email	
Tech Fields	
• Name	Optional
• Phone	
• Email	
Name Server(s)	
Name Server IP Address(es)	
• Additional data elements as identified by Registry Operator in its registration policy, such as (i) status as Registry Operator Affiliate or Trademark Licensee [.MICROSOFT]; (ii) membership in community [.ECO]; (iii) licensing, registration or appropriate permits (.PHARMACY, .LAW) place of domicile [.NYC]; (iv) business entity or activity [.BANK, .BOT]	Optional

Required   
Optional 

**EPDP Team Recommendation #8.**

1. The EPDP Team recommends that ICANN Org enters into legally-compliant data protection agreements with the data escrow providers.
2. The EPDP Team recommends updates to the contractual requirements for registries and registrars to transfer data that they process to the data escrow provider to ensure consistency with the data elements listed below (for illustrative purposes, see relevant workbooks in Annex

D that analyze the purpose to provide mechanisms for safeguarding Registered Name Holders' Registration Data).

3. The data elements to be transferred by Registries and Registrars to data escrow providers are:

For Registrars:

Data Elements (Collected & Generated*)	Collection Logic
Domain Name	Green
Registrar Registration Expiration Date*	Yellow
Registrar*	Green
Reseller*	Yellow
Registrant Fields	Yellow
• Name	Green
• Street	
• City	
• State/province	
• Postal code	
• Country	
• Phone	
• Phone ext	Yellow
• Fax	
• Fax ext	
• Email	Green
Tech Fields	Yellow
• Name	Yellow
• Phone	
• Email	

For Registries:

Data Elements (Collected & Generated*)	Collection Logic
Domain Name	Green
Registry Domain ID*	
Registrar Whois Server*	Green
Registrar URL*	
Updated Date*	
Creation Date*	
Registry Expiry Date*	
Registrar Registration Expiration Date*	Yellow

Registrar*	Green
Registrar IANA ID*	
Registrar Abuse Contact Email*	
Registrar Abuse Contact Phone*	
Reseller*	Yellow
Domain Status(es)*	Green
Registry Registrant ID*	
Registrant Fields	Light Gray
• Name	Yellow
• Organization	
• Street	
• City	
• State/province	
• Postal code	
• Country	
• Phone	
• Phone ext	
• Fax	
• Fax ext	
• Email	
Tech ID*	Yellow
Tech Fields	
• Name	
• Phone	
• Email	
Name Server(s)	
DNSSEC	
Name Server IP Address(es)	
• Additional data elements as identified by Registry Operator in its registration policy, such as (i) status as Registry Operator Affiliate or Trademark Licensee [.MICROSOFT]; (ii) membership in community [.ECO]; (iii) licensing, registration or appropriate permits (.PHARMACY, .LAW) place of domicile [.NYC]; (iv) business entity or activity [.BANK, .BOT]	

**EPDP Team Recommendation #9.**

1. The EPDP Team recommends that updates, if needed, are made to the contractual requirements concerning the registration data elements for registries and registrars to transfer to ICANN Org the domain name registration data that they process when required/requested for purpose 5 (Contractual Compliance). (Note: Current language within the Contracts currently provides the appropriate scope for contractual compliance requests and subsequent transfer (e.g. Art 2.11 new gTLD Base Registry Agreement). (For illustrative purposes, please see Annex D - contractual compliance monitoring requests, audits, and complaints submitted by Registry Operators, Registrars, Registered Name Holders, and other Internet users). Registrars and Registries are required to transmit to ICANN org any RDS elements that are requested for Purpose 5. To clarify, the data elements listed in Annex D are the aggregate of data elements that ICANN Compliance may request. As noted in the Summary of ICANN Organization’s Contractual Compliance Team Data Processing Activities “If the Contractual Compliance Team is unable to validate the issue(s) outlined in a complaint because the publicly available WHOIS data is redacted/masked, it will request the redacted/masked registration data directly from the contracted party (or its representative). In these instances, the Contractual Compliance Team will only request the redacted/masked data elements that are needed to validate the issue(s) outlined in the complaint”. Note, this recommendation does not exclude other information required by ICANN Contractual Compliance to enforce ICANN consensus policies and contracts.

**EPDP Team Recommendation #10.**

Requirements for processing personal data in public RDDS where processing is subject to GDPR: The EPDP Team recommends that redaction must be applied as follows to the data elements that are collected. Data elements neither redacted nor anonymized must appear via free public based query access<sup>6</sup>

Data Elements (Collected & Generated*)	Redacted	Disclosure Logic
Domain Name	No	Green
Registry Domain ID*	Yes	
Registrar Whois Server*	No	
Registrar URL*	No	
Updated Date*	No	
Creation Date*	No	
Registry Expiry Date*	No	
Registrar Registration Expiration Date*	No	
Registrar*	No	Green
Registrar IANA ID*	No	
Registrar Abuse Contact Email*	No	
Registrar Abuse Contact Phone*	No	

<sup>6</sup> As noted in the data elements workbooks, “a minimum public data set of registration data will be made available for query of gTLD second level domains in a freely accessible directory. Where a data element has been designated as non-public, it will be redacted”.

Reseller*	No	Yellow
Domain Status(es)*	No	Green
Registry Registrant ID*	Yes	Green
Registrant Fields		
• Name	Yes	Green
• Organization	Yes	
• Street	Yes	
• City	Yes	
• State/province	No	
• Postal code	Yes	
• Country	No	
• Phone	Yes	
• Email	Yes	
Tech ID*	Yes	Green
Tech Fields		
• Name	Yes	Green
• Phone	Yes	
• Email	Yes	
Name Server(s)	No	Yellow
DNSSEC	No	Yellow
Name Server IP Address(es)	No	Yellow
Last Update of Whois Database*	No	Green

Required  
Optional



**EPDP Team Recommendation #11.**

The EPDP Team recommends that redaction must be applied as follows to this data element:

Data Element	Redacted
Registrant Field	
• City	Yes

The EPDP Team expects to receive further legal advice on this topic which it will analyze in phase 2 of its work to determine whether or not this recommendation should be modified.

**EPDP Team Recommendation #12.**

The EPDP Team recommends that:

- The Organization field will be published if that publication is acknowledged or confirmed by the registrant via a process that can be determined by each registrar. If the registered name holder does not confirm the publication, the Organization field can be redacted or the field contents deleted at the option of the registrar.
- The implementation will have a phase-in period to allow registrars the time to deal with existing registrations and develop procedures.
- In the meantime, registrars will be permitted to redact the Organization Field.
- A registry Operator, where they believe it feasible to do so, may publish or redact the Org Field in the RDDS output.

### **EPDP Team Recommendation #13.**

- 1) The EPDP Team recommends that the Registrar MUST provide an email address or a web form to facilitate email communication with the relevant contact, but MUST NOT identify the contact email address or the contact itself, unless as per Recommendation #6, the Registered Name Holder has provided consent for the publication of its email address.
- 2) The EPDP Team recommends Registrars MUST maintain Log Files, which shall not contain any Personal Information, and which shall contain confirmation that a relay of the communication between the requestor and the Registered Name Holder has occurred, not including the origin, recipient, or content of the message. Such records will be available to ICANN for compliance purposes, upon request. Nothing in this recommendation should be construed to prevent the registrar from taking reasonable and appropriate action to prevent the abuse of the registrar contact process.<sup>7</sup>

### **EPDP Team Recommendation #14.**

In the case of a domain name registration where an "affiliated"<sup>8</sup> privacy/proxy service used (e.g. where data associated with a natural person is masked), Registrar (and Registry where applicable) MUST include in the public RDDS and return in response to any query full non-personal RDDS data of the privacy/proxy service, which MAY also include the existing privacy/proxy pseudonymized email.

### **EPDP Team Recommendation #15.**

1. In order to inform its Phase 2 deliberations, the EPDP team recommends that ICANN Org, as a matter of urgency, undertakes a review of all of its active processes and procedures so as to identify and document the instances in which personal data is requested from a registrar beyond the period of the 'life of the registration'. Retention periods for specific data elements should then be identified, documented, and relied upon to establish the required relevant and specific minimum data retention expectations for registrars. The EPDP Team recommends

---

<sup>7</sup> Examples of abuse could include, but are not limited to, requestors purposely flooding the registrar's system with voluminous and invalid contact requests. This recommendation is not intended to prevent legitimate requests.

<sup>8</sup> As defined in the Registrar Accreditation Agreement, Specification on Privacy and Proxy Registrations: "For any Proxy Service or Privacy Service offered by the Registrar or its Affiliates, including any of Registrar's or its Affiliates' P/P services distributed through Resellers, and used in connection with Registered Names Sponsored by the Registrar, the Registrar and its Affiliates".



community members be invited to contribute to this data gathering exercise by providing input on other legitimate purposes for which different retention periods may be applicable.

2. In the interim, the EPDP team has recognized that the Transfer Dispute Resolution Policy (“TDRP”) has been identified as having the longest justified retention period of one year and has therefore recommended registrars be required to retain only those data elements deemed necessary for the purposes of the TDRP, for a period of fifteen months following the life of the registration plus three months to implement the deletion, i.e., 18 months.<sup>9</sup> This retention is grounded on the stated policy stipulation within the TDRP that claims under the policy may only be raised for a period of 12 months after the alleged breach (FN: see TDRP section 2.2) of the Transfer Policy (FN: see Section 1.15 of TDRP). This retention period does not restrict the ability of registries and registrars to retain data elements provided in Recommendations 4 -7 for other purposes specified in Recommendation 1 for shorter periods.<sup>10</sup>
3. The EPDP team recognizes that Contracted Parties may have needs or requirements for different retention periods in line with local law or other requirements. The EPDP team notes that nothing in this recommendation, or in separate ICANN-mandated policy, prohibits contracted parties from setting their own retention periods, which may be longer or shorter than what is specified in ICANN policy.
4. The EPDP team recommends that ICANN Org review its current data retention waiver procedure<sup>11</sup> to improve efficiency, request response times, and GDPR compliance, e.g., if a Registrar from a certain jurisdiction is successfully granted a data retention waiver, similarly-situated Registrars might apply the same waiver through a notice procedure and without having to produce a separate application.

#### **EPDP Team Recommendation #17.**

- 1) The EPDP Team recommends that Registrars and Registry Operators are permitted to differentiate between registrations of legal and natural persons, but are not obligated to do so.
- 2) The EPDP Team recommends that as soon as possible ICANN Org undertakes a study, for which the terms of reference are developed in consultation with the community, that considers:
  - The feasibility and costs including both implementation and potential liability costs of differentiating between legal and natural persons;
  - Examples of industries or other organizations that have successfully differentiated between legal and natural persons;
  - Privacy risks to registered name holders of differentiating between legal and natural persons; and
  - Other potential risks (if any) to registrars and registries of not differentiating.
- 3) The EPDP Team will determine and resolve the Legal vs. Natural issue in Phase 2.

---

<sup>9</sup> Even though the TDRP provides for a 12 month period to file a complaint, the data is to be retained for an additional three months to ensure that TDRP complaints that are filed at the end of the 12 month period can be addressed.

<sup>10</sup> In Phase 2, the EPDP Team will work on identifying different retention periods for any other purposes, including the purposes identified in this Report.

<sup>11</sup> For avoidance of doubt, ICANN’s data retention waiver procedure only applies to contracted parties who need to apply for shorter data retention periods. Contracted parties do not need to seek a waiver for longer retention periods for data retention under their own controllership.

## **EPDP Team Recommendation #18.**

The EPDP Team recommends that the current requirements in Sections 4.1 and 4.2 of Appendix A to the Temporary Specification in relation to access to non-public registration data, upon expiration are replaced with the criteria below and finalized through the requirements set during the implementation stage, recognizing that work in Phase 2 on a system for Standardized Access to Non-Public Registration Data may further complement, revise, or supersede these requirements. In addition, the EPDP team recommends that when a system for Standardized Access to Non-Public Registration Data is developed, the need for a policy governing Reasonable Requests for Lawful Disclosure outside of that model will be required.

The EPDP Team recommends that the new policy will refer to “Reasonable Requests for Lawful Disclosure of Non-Public Registration Data” or “Reasonable Requests for Lawful Disclosure”, instead of ‘Reasonable Access’ and that Registrar and Registry Operator must process and respond to Reasonable Requests for Lawful Disclosure.

The basic criteria for Reasonable Requests Lawful Disclosure are as follows: First, a Reasonable Request for Lawful Disclosure must follow the format required by the Registrar or Registry Operator and provide the required information, which are to be finalized during the implementation phase (see below). Second, delivery of a properly formed Reasonable Request for Lawful Disclosure to a Registrar or Registry Operator does NOT require automatic disclosure of information. Third, Registrars and Registry Operators will consider each request on its merits, including the asserted GDPR legal bases.

Registrars and Registry Operators must publish, in a publicly accessible section of their web-site, the mechanism and process for submitting Reasonable Requests for Lawful Disclosure. The mechanism and process should include information on the required format and content of requests, means of providing a response, and the anticipated timeline for responses.

The EPDP Team recommends that criteria for a Reasonable Request for Lawful Disclosure and the requirements for acknowledging receipt of a request and response to such request will be defined as part of the implementation of these policy recommendations but will include at a minimum:

- Minimum Information Required for Reasonable Requests for Lawful Disclosure:
  - Identification of and information about the requestor (including, the nature/type of business entity or individual, Power of Attorney statements, where applicable and relevant);
  - Information about the legal rights of the requestor and specific rationale and/or justification for the request, (e.g. What is the basis or reason for the request; Why is it necessary for the requestor to ask for this data?);
  - Affirmation that the request is being made in good faith;
  - A list of data elements requested by the requestor and why this data is limited to the need;
  - Agreement to process lawfully any data received in response to the request.

● Timeline & Criteria for Registrar and Registry Operator Responses - Registrars and Registries must reasonably consider and accommodate requests for lawful disclosure:

- Response time for acknowledging receipt of a Reasonable Request for Lawful Disclosure. Without undue delay, but not more than two (2) business days from receipt, unless shown circumstances does not make this possible.
- Requirements for what information responses should include. Responses where disclosure of data (in whole or in part) has been denied should include: rationale sufficient for the requestor to understand the reasons for the decision, including, for example, an analysis and explanation of how the balancing test was applied (if applicable).
- Logs of Requests, Acknowledgements and Responses should be maintained in accordance with standard business recordation practices so that they are available to be produced as needed including, but not limited to, for audit purposes by ICANN Compliance;
- Response time for a response to the requestor will occur without undue delay, but within maximum of 30 days unless there are exceptional circumstances. Such circumstances may include the overall number of requests received. The contracted parties will report the number of requests received to ICANN on a regular basis so that the reasonableness can be assessed.
- A separate timeline of [less than X business days] will considered for the response to 'Urgent' Reasonable Disclosure Requests, those Requests for which evidence is supplied to show an immediate need for disclosure [time frame to be finalized and criteria set for Urgent requests during implementation].

The EPDP Team recommends that the above be implemented and further work on defining these criteria commences as needed and as soon as possible.

#### **EPDP Team Recommendation #19.**

The EPDP Team recommends that ICANN Org negotiates and enters into required data protection agreements, as appropriate, with the Contracted Parties. In addition to the legally required components of such agreement, the agreement shall specify the responsibilities of the respective parties for the processing activities as described therein. Indemnification clauses should ensure that the risk for certain data processing is borne, to the extent appropriate, by the parties that are involved in the processing. Due consideration should be given to the analysis carried out by the EPDP Team in its Final Report.

#### **EPDP Team Recommendation #20.**

During Phase 1 of its work, the EPDP Team documented the data processing activities and responsible parties associated with gTLD registration data. The EPDP Team, accordingly, recommends the inclusion of the data processing activities and responsible parties, outlined below, to be confirmed and documented in the relevant data protection agreements, noting, however, this Recommendation may be affected by the finalization of the necessary agreements that would confirm and define the roles and responsibilities.

**ICANN PURPOSE<sup>12</sup>:**

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

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

<u>Processing Activity</u>	<u>Responsible Party<sup>13</sup>:</u>	<u>Lawful Basis<sup>14</sup>:</u>
Collection	ICANN Registrars Registries	6(1)(b) for Registrars 6(1)(f) for ICANN and Registries
Transmission from Rr to Ry	Registrars Registries	Certain data elements (domain name and nameservers) would be required to be disclosed. The lawful basis would be 6(1)b, should personal data be involved for Registrars and 6(1)(f) of the GDPR for Registries.  For other data elements, Art. 6(1)(f) of the GDPR.
Disclosure	Registrars Registries	Certain data elements (domain name and nameservers) would be required to be transferred from the Registrar to Registry. The lawful basis would be 6(1)b, should personal data be involved, for Registrars and 6(1)(f) of the GDPR for Registries. 6(1)(f)
Data Retention	ICANN	6(1)(f)

<sup>12</sup> The term ICANN Purpose is used to describe purposes for processing personal data that should be governed by ICANN Org via a Consensus Policy. Note there are additional purposes for processing personal data, which the contracted parties might pursue, but these are outside of what ICANN and its community should develop policy on or contractually enforce. It does not necessarily mean that such purpose is solely pursued by ICANN org.

<sup>13</sup> Note, the responsible party is not necessarily the party carrying out the processing activity. This applies to all references of 'responsible party' in these tables.

<sup>14</sup> In relation to the application of 6(1)b, please see input provided by external legal counsel in relation to charter questions k, l and m above.

### **EPDP Team Recommendation #21.**

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

### **EPDP Team Recommendation #22.**

The EPDP Team recommends that ICANN Org must enter into appropriate data protection agreements with dispute resolution providers in which, amongst other items, the data retention period is specifically addressed.

### **EPDP Team Recommendation #23.**

The EPDP Team recommends that, for the new policy on gTLD registration data, the following requirements MUST apply in relation to URS and UDRP until such time as these are superseded by recommendations from the RPMs PDP WG and/or policies from the EPDP regarding disclosure:

Uniform Rapid Suspension (supplemental requirements for the 17 October 2013 URS High Level Technical Requirements for Registries and Registrars and URS Rules effective 28 June 2013)

- (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.
- (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.
- (3) 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 of 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 complaint against an unidentified Respondent and the Provider shall provide the Complainant with the relevant contact details of the Registered Name Holder after being presented with a complaint against an unidentified Respondent. Uniform Dispute Resolution Policy (supplemental requirements for the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"))

- (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.
- (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 of 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 complaint against an unidentified Respondent and the Provider shall provide the Complainant with the relevant contact details of the Registered Name Holder after being presented with a complaint against an unidentified Respondent.

#### **EPDP Team Recommendation #24.**

The EPDP Team recommends that for the new policy on gTLD registration data, the following requirements MUST apply in relation to the Transfer Policy until such time these are superseded by recommendations that may come out of the Transfer Policy review that is being undertaken by the GNSO Council:

Supplemental procedures for the Transfer Policy applicable to all ICANN-accredited Registrars

(a) 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:

(a1) The Gaining Registrar is not REQUIRED to obtain a Form of Authorization from the Transfer Contact.

(a2) 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.

(b) As used in the Transfer Policy:

(b1) The term "Whois data" SHALL have the same meaning as "Registration Data".

(b2) The term "Whois details" SHALL have the same meaning as "Registration Data".

(b3) The term "Publicly accessible Whois" SHALL have the same meaning as "RDDS".

(b4) The term "Whois" SHALL have the same meaning as "RDDS".

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

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

#### **EPDP Team Recommendation #25.**

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

#### **EPDP Team Recommendation #26.**

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

#### **EPDP Team Recommendation #27.**

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

- Registry Registration Data Directory Services Consistent Labeling and Display Policy
- Thick WHOIS Transition Policy for .COM, .NET, .JOBS
- Rules for Uniform Domain Name Dispute Resolution Policy
- WHOIS Data Reminder Policy
- Transfer Policy
- Uniform Rapid Suspension System (URS) Rules
- Transfer Dispute Resolution Policy

#### **EPDP Team Recommendation #28.**

The EPDP Team recommends that the effective date of the gTLD Registration Data Policy shall be February 29, 2020. All gTLD Registry Operators and ICANN-accredited registrars will be required to comply with the gTLD Registration Data Policy as of that date. The EPDP Team recommends that until February 29, 2020, registries and registrars are required EITHER to comply with this gTLD Registration Data Policy OR continue to implement measures consistent with the Temporary Specification (as adopted by the ICANN Board on 17 May 2018, and expired on 25 May 2019). Registries and registrars who continue to implement measures compliant with the expired Temporary Specification will not be subject to Compliance penalty specifically related to those measures until February 29, 2020. The EPDP Team furthermore recommends that, as a matter of urgency, the GNSO Council and ICANN Org, informally convene the Implementation Review Team to allow for the necessary planning to take place before ICANN Board consideration of this Final Report, following which the IRT would be formally convened.

#### **EPDP Team Recommendation #29.**

Recognizing that in the case of some existing registrations, there may be an Administrative Contact but no or incomplete Registered Name Holder contact information, the EPDP team recommends that prior to eliminating Administrative Contact fields, all Registrars must ensure that each registration contains Registered Name Holder contact information.

The EPDP Team did not reach CONSENSUS on the following recommendations but these were adopted by the GNSO Council with the necessary support nevertheless:

**EPDP Team Recommendation #2.** (Divergence)

The EPDP Team commits to considering in Phase 2 of its work whether additional purposes should be considered to facilitate ICANN's Office of the Chief Technology Officer (OCTO) to carry out its mission (see <https://www.icann.org/octo>). This consideration should be informed by legal guidance on if/how provisions in the GDPR concerning research apply to ICANN Org and the expression for the need of such pseudonymized data by ICANN.

**EPDP Team Recommendation #16.** (Divergence)

The EPDP Team recommends that Registrars and Registry Operators are permitted to differentiate between registrants on a geographic basis, but are not obligated to do so.