

Hello Dennis and IPT,

Thank you for laying out the context for this discussion and the IPT's view in the Rationale Document. The CPH members of the IRT have several notes.

1. Accuracy of rationale doc.

The draft recommendation language provided in the rationale doc does not match the "OneDoc"; it should refer to the registrar's sponsorship rather than the life of the domain.

2. GDPR Article 5(1)(b) is not a lawful basis for data processing.

There are several concerns with basing the requirement for retention on GDPR Article 5(1)(b); primarily, the issue is that Article 5 outlines **principles** for processing data, not **lawful bases** for processing data.

Instead, the legal basis for processing data, for both primary and secondary purposes, is found in GDPR Article 6. For processing in the public interest, the only option is 6(1)(e). That said, it is important to note that the basis for processing data in the public interest as laid out in Art. 6(1)(e) must be laid out in Member State Law or Union Law in order to be a lawful data processing activity.

3. The "public interest" is not clearly defined and related processing is limited in the GDPR.

"Public Interest" is yet to be defined by ICANN or the ICANN community; there are certainly differing and possibly even conflicting definitions in various jurisdictions with respect to data protection law and data protection authorities.

Recital 156 of GDPR Article 5 notes several other considerations for any action related to archiving in the public interest. "Archiving purposes in the public interest" involves an assessment of the Controller's ability to conduct such processing in a way that makes the data anonymous or pseudonymous and envisions protections provided by Member State law for such processing.

4. Purposes must be defined before processing takes place.

Purposes for processing data (both primary and secondary, or "further" processing) must be defined before the data is initially processed for its primary purpose. Without defining the primary purpose for retaining the data, a secondary purpose cannot be evaluated for compatibility.

Some examples of potential purposes for processing retained data are given in this Rationale Document, such as an ICANN Compliance complaint occurring after the registrar's sponsorship of the domain, but it has not been demonstrated that the data is required in order to address the complaint; since the goal of the TempSpec and the EPDP is to update existing requirements to be GDPR-compliant, if the examples are now not compliant this demonstrates that they are no longer legally acceptable data processing activities and they should be ceased. Instead, the example issues could be addressed in other ways: a registrar can confirm data that Compliance already has on

file rather than providing it to Compliance, or similarly, a registrar can confirm that the RNH was notified as required without either side having to disclose the personal data of the RNH.

The data audit provided by ICANN and referenced in the Rationale Document does not clearly indicate a purpose for processing retained data other than the TDRP; if further information were provided we would certainly examine the purposes ICANN Compliance puts each data element to and why they may be necessary.

The principle of data minimization (GDPR Art 5(1)(c)) must be respected at all times: only data specifically required for TDRP is to be retained under this data processing purpose unless and until another retention processing purpose is identified and documented.

Unless and until a specific purpose other than TDRP is identified, the Policy can only require the processing of retained data for this one purpose (responding to TDRP disputes), and so the retention requirement in the Policy must be limited accordingly.

The CPH specifically requests the following:

1. ICANN Staff provide to the IRT a list of what data elements are specifically required for the TDRP.
2. The Data Retention section of the OneDoc be updated such that it clearly indicates the retained data are only to be processed in the course of addressing a TDRP issue. This can be achieved by adding the phrase “for the purpose of the TDRP” to the end of the sentence (following “sponsorship of the registration.”)

Thank you,

The CPH IRT Team.