

Registries Stakeholder Group Statement

Issue: Initial Report of the Expedited Policy Development Process (EPDP) on the Temporary Specification for gTLD Registration Data Team

Date statement submitted: **21 December 2018**

Reference URL:

<https://www.icann.org/public-comments/epdp-gtld-registration-data-specs-initial-2018-11-21-en>

Note:

- *administrative questions related to the google form (name & email submitter, save progress) are not included in this document. (the questions 1-6, 31, 40, 100, 105, 135 and 146).*
- *For “multiple choice” questions the RySG response is highlighted in yellow.*

EPDP On the Temporary Specification for gTLD Registration Data Public Comment Proceeding Input Form

* Required

NOTES:

Please refer to the specific recommendation and relevant section or page number of the Initial Report for additional details and context about each recommendation. Where applicable, you are encouraged to reference sections in the report for ease of the future review by the EPDP Team.

--Your comments should take into account scope of the EPDP as described by the Charter and General Data Protection Regulation (GDPR) compliance.

--For transparency purposes, all comments submitted to the Public Comment forum will be displayed publicly via an automatically -generated Google Spreadsheet. Email addresses provided by commenters will not be displayed.

--To maximize the visibility of your comments to the EPDP Team, please submit your comments via this form only. If you are unable to use this form, alternative arrangements can be made.

--The final date of the public comment proceeding is 23:59 UTC on 21 December 2018. Any comments received after that date will not be reviewed / discussed by the EPDP Team.

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Section 3, Part 1: Purposes for Processing Registration Data

The EPDP team was tasked with determining whether the ICANN and Contracted Party Purposes for Processing Registration Data listed in the Temporary Specification are appropriate and if additional "Purposes" are required. The Team developed DNS requirements, the data requirements, and mapped data flows in order to identify these purposes.

Recommendation #1: Purposes for Processing Registration Data

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

Note that for each of the below purposes, the EPDP Team has also identified: (i) the related processing activities; (ii) the corresponding lawful basis for each processing activity; and (iii) the data controllers and processors involved in each processing activity. For more information regarding the above, please refer to the Data Elements Workbooks which can be found in the Annex D of the Initial Report.

PURPOSE 1 FOR PROCESSING REGISTRATION DATA:

AS SUBJECT TO REGISTRY AND REGISTRAR TERMS, CONDITIONS AND POLICIES, AND ICANN CONSENSUS POLICIES:

- (I) TO ESTABLISH THE RIGHTS OF A REGISTERED NAME HOLDER IN A REGISTERED NAME;
- (II) TO ENSURE THAT A REGISTERED NAME HOLDER MAY EXERCISE ITS RIGHTS IN THE USE AND DISPOSITION OF THE REGISTERED NAME; AND
- (III) TO ACTIVATE A REGISTERED NAME AND ALLOCATE IT TO THE REGISTERED NAME HOLDER

7. Please choose your level of support for Purpose 1:

Mark only one oval.

Support Purpose as written

Support Purpose intent with wording change

Significant change required: changing intent and wording

Purpose should be deleted

8. If your response requires an edit or deletion of Purpose #1, please indicate the revised wording here (keep in mind that "Purposes" must be GDPR compliant).

The RySG recommends separating Purpose 1 as currently written into two separate purposes and amending the language as follows:

"IN ACCORDANCE WITH THE RELEVANT REGISTRY AGREEMENTS AND REGISTRAR ACCREDITATION AGREEMENTS, ACTIVATE A REGISTERED NAME AND ALLOCATE IT TO THE REGISTERED NAME HOLDER."

and

"AS SUBJECT TO 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 RIGHTS IN THE USE AND DISPOSITION OF THE REGISTERED NAME."

9. Please provide rationale for your recommendation.

The RySG believes that Purpose 1 encompasses the fundamental and primary reasons for which gTLD registration data is processed in the domain name registration ecosystem. However, as written, the Purpose 1 text captures two separate and distinct purposes: one is the technical provisioning of a domain name registration and the second is the establishment of the Registered Name Holder's rights in that domain. The latter of these two purposes may be conditioned by (or subject to) registry or registrar terms, conditions or policies at the option of the registry or registrar, but the former is not. Furthermore, these two purposes may require different processing and/or different data elements to achieve them, with the data elements necessary to achieve the establishment of the rights to the domain dependent on the specific terms, conditions and policies implemented by the registry or registrar.

PURPOSE 2 FOR PROCESSING REGISTRATION DATA

MAINTAINING THE SECURITY, STABILITY, AND RESILIENCY OF THE DOMAIN NAME SYSTEM IN ACCORDANCE WITH ICANN'S MISSION THROUGH THE ENABLING OF LAWFUL ACCESS FOR LEGITIMATE THIRD PARTY INTERESTS TO DATA ELEMENTS COLLECTED FOR THE OTHER PURPOSES IDENTIFIED HEREIN

10. Choose your level of support of Purpose #2:

Mark only one oval.

Support Purpose as written

Support Purpose intent with wording change

Significant change required: changing intent and wording

Purpose should be deleted

11. If your response requires an edit or deletion of Purpose #2, please indicate the revised wording here (keep in mind that "Purposes" must be GDPR compliant).

12. Please provide rationale for your recommendation.

The core of this recommendation is a suggestion that Contracted Parties collect registration data for the purpose of disclosure. Contracted Parties do not and it is submitted that this is not a shared purpose of ICANN and Contracted Parties.

Furthermore, the text of the recommendation simply mirrors that of article 6(1)f of the GDPR. This amounts to a legal obligation on all data controllers i.e. the controller shall consider a disclosure request regarding the data processed by them; insofar as the disclosing controller is satisfied, as per under article 6(1)f, that the requesting 3rd party holds a legitimate purpose for

such disclosure and such a disclosure is weighed appropriately against the data subject's rights. This is entirely separate from a 'purpose', and in fact is applicable regardless of purpose. It is our belief that Purpose 2, at most is mere restatement of a legal basis for processing, and not a valid "purpose" for either ICANN or the Contracted Parties.

It is submitted that the inclusion of Purpose 2 is therefore a fundamental misunderstanding and misinterpretation of Art. 6(1)f, and absent affirmative confirmation as to the legality of this purpose, it should be deleted in its entirety, as it does not add anything to the data processing review.

PURPOSE 3 FOR PROCESSING REGISTRATION DATA

ENABLE COMMUNICATION WITH AND/OR NOTIFICATION TO THE REGISTERED NAME HOLDER AND/OR THEIR DELEGATED AGENTS OF TECHNICAL AND/OR ADMINISTRATIVE ISSUES WITH A REGISTERED NAME

13. Choose your level of support of Purpose #3:

Mark only one oval.

Support Purpose as written

Support Purpose intent with wording change

Significant change required: changing intent and wording

Purpose should be deleted

14. If your response requires an edit or deletion of Purpose #3, please indicate the revised wording here (keep in mind that "Purposes" must be GDPR compliant).

The RySG supports the principle of this comment, but recommends the following wording: "ENABLE **LAWFUL** COMMUNICATION WITH AND/OR NOTIFICATION, **OF RELEVANT DOMAIN-RELATED MATTERS**, TO THE REGISTERED NAME HOLDER."

15. Please provide rationale for your recommendation.

It remains unclear as to whether or not Registered Name Holders can designate third party contact information in the Tech and Admin field, or indeed whether or not the Admin or Tech fields should be retained as part of the minimum data set. The RySG submits that the proposed wording change is closer to the true purpose, and provides more clarity than the current draft wording.

Furthermore, the RySG submits, regardless of whether or not the wording change is accepted, that the question of the Registered Name Holder being able to designate third parties as contacts requires further deliberation in both this and other contexts.

PURPOSE 4 FOR PROCESSING REGISTRATION DATA

PROVIDE MECHANISMS FOR SAFEGUARDING REGISTERED NAME HOLDERS' REGISTRATION DATA IN THE EVENT OF A BUSINESS OR TECHNICAL FAILURE, OR OTHER UNAVAILABILITY OF A REGISTRAR OR REGISTRY OPERATOR

16. Choose your level of support of Purpose #4:

Mark only one oval.

Support Purpose as written

Support Purpose intent with wording change

Significant change required: changing intent and wording

Purpose should be deleted

17. If your response requires an edit or deletion of Purpose #4, please indicate the revised wording here (keep in mind that "Purposes" must be GDPR compliant).

18. Please provide rationale for your recommendation.

The RySG supports this purpose as written. Provided that the requisite data protection mechanisms and agreements are in place between contracted parties and escrow agents, mechanisms for safeguarding registered name holder registration data is in the registrants' best interest in allowing contracted parties to provide a stable and secure service with reasonable expectations of continuity.

The RySG, noting the discussions of the ePDP team surrounding legal basis for such processing, would also like to emphasise that any processing of data for such a purpose is based on a balanced application of Article 6(1)f and **NOT** article 6(1)b,

PURPOSE 5 FOR PROCESSING REGISTRATION DATA

HANDLE CONTRACTUAL COMPLIANCE MONITORING REQUESTS, AUDITS, AND COMPLAINTS SUBMITTED BY REGISTRY OPERATORS, REGISTRARS, REGISTERED NAME HOLDERS, AND OTHER INTERNET USERS

19. Choose your level of support of Purpose #5:

Mark only one oval.

Support Purpose as written

Support Purpose intent with wording change

Significant change required: changing intent and wording

Purpose should be deleted

20. If your response requires an edit or deletion of Purpose #5, please indicate the revised wording here (keep in mind that "Purposes" must be GDPR compliant).

The RySG proposes that Purpose #5 be divided into two separate purposes as follows:
“HANDLE CONTRACTUAL COMPLIANCE MONITORING REQUESTS AND AUDIT ACTIVITIES CONSISTENT WITH THE TERMS OF THE REGISTRY AGREEMENT AND THE REGISTRAR ACCREDITATION AGREEMENTS.”

and

“HANDLE COMPLIANCE COMPLAINTS INITIATED BY ICANN, REGISTRY OPERATORS, REGISTRARS, REGISTERED NAME HOLDERS, AND OTHER INTERNET USERS CONSISTENT WITH THE TERMS OF THE REGISTRY AGREEMENT AND THE REGISTRAR ACCREDITATION AGREEMENTS.”

21. Please provide the rationale for your recommendation.

The purpose as written is ambiguous and open to conflicting interpretations regarding whether the scope includes compliance actions initiated by ICANN. We understand that “Registry Operators, Registrars, Registered Name Holders, and other internet users” is intended to only modify the clause regarding complaints, but the language could be reasonably understood as limiting “monitoring requests” and “audits” to those parties as well. The purpose should be revised to address this ambiguity.

Moreover, the EPDP should consider two separate purposes related to Compliance activities: the first for the administration of complaints submitted to ICANN, and the second for monitoring and audit activities. These are separate and appreciably different actions and, as a result, should rely on distinct and explicit purposes.

The RySG emphasizes that the inclusion of this purpose in no way expands the scope of ICANN Compliance’s narrowly defined audit rights and related ability to require information from contracted parties. Under Section 2.11 of the new gTLD Registry Agreement (Section 3 and Articles II and III of the legacy gTLD Registry Agreement), ICANN audits are limited to “assess[ing] compliance by Registry Operator” with Article 1 and Article 2 of the Registry Agreement, and must be “tailored to achieve the purpose of assessing compliance.” Our understanding is that the language of this purpose in no way enlarges that very limited role for ICANN Compliance. In addition, the RySG emphasizes that this purpose alone is not sufficient to justify the processing of data under GDPR. ICANN Compliance ensure and demonstrate to contracted parties that any processing that flows from this purpose is compliant with the requirements of GDPR. The RySG notes that appropriate data processing and protection terms need to be incorporated into appropriate agreements. In addition, appropriate legal bases for processing must be identified for each ICANN purpose. The EPDP should ensure that ICANN Compliance is again engaged to provide a ‘Record of Processing Activities’ and equally provide assurances that data processing, and data sharing within ICANN is on a strictly limited and need to know basis.

PURPOSE 6 FOR PROCESSING REGISTRATION DATA

COORDINATE, OPERATIONALIZE, AND FACILITATE POLICIES FOR RESOLUTION OF DISPUTES REGARDING OR RELATING TO THE REGISTRATION OF DOMAIN NAMES (AS OPPOSED TO THE USE OF SUCH DOMAIN NAMES), NAMELY, THE UDRP, URS, PDDRP, RRDRP, AND FUTURE DEVELOPED DOMAIN NAME REGISTRATION- RELATED DISPUTE PROCEDURES FOR WHICH IT IS ESTABLISHED THAT THE PROCESSING OF PERSONAL DATA IS NECESSARY.

22. Choose your level of support of Purpose #6:

Mark only one oval.

Support Purpose as written

Support Purpose intent with wording change

Significant change required: changing intent and wording

Purpose should be deleted

23. If your response requires an edit or deletion of Purpose #6, please indicate the revised wording here (keep in mind that "Purposes" must be GDPR compliant).

The RySG recommends the following edit to Purpose #6:
“COORDINATE, OPERATIONALIZE, AND FACILITATE **THE IMPLEMENTATION OF CONSENSUS** POLICIES FOR RESOLUTION OF DISPUTES REGARDING OR RELATING TO THE REGISTRATION OF DOMAIN NAMES (AS OPPOSED TO THE USE OF SUCH DOMAIN NAMES), NAMELY, THE UDRP, URS, PDDRP, AND RRDRP.”

24. Please provide rationale for your recommendation.

The Article 29 Working Party advised ICANN of the importance of “explicitly defining legitimate purposes” and cautioned that “use of the word ‘include’ suggests that not all purposes are made explicit, which would also be incompatible with article 5(1)b GDPR.” The inclusion of “future developed domain name registration dispute procedures” should not be included in this purpose under the same rationale. Undefined future procedures are by definition not explicitly defined and should be omitted from this purpose. The Article 29 Working Party and EDPB have stated on several occasions that purposes can not be speculative and must apply to an existing processing purpose. We recognize that there is a legitimate interest in attempting to “future-proof” this policy, but implementation of a new dispute resolution procedure would undoubtedly require policy amendments and additional notice for registrants, such that the inclusion of this language here likely does not save the community from future requirements to update this policy. To that end, referencing “consensus policy” may keep the scope of the purpose limited but also allow reasonable inclusion of any dispute resolution processes that are developed as consensus policies in the future.

PURPOSE 7 FOR PROCESSING REGISTRATION DATA

ENABLING VALIDATION TO CONFIRM THAT REGISTERED NAME HOLDER MEETS OPTIONAL GTLD REGISTRATION POLICY ELIGIBILITY CRITERIA VOLUNTARILY ADOPTED BY THE REGISTRY

OPERATOR

25. Choose your level of support of Purpose #7:

Mark only one oval.

Support Purpose as written

Support Purpose intent with wording change

Significant change required: changing intent and wording

Purpose should be deleted

26. If your response requires an edit or deletion of Purpose #7, please indicate the revised wording here (keep in mind that "Purposes" must be GDPR compliant).

27. Please provide rationale for your recommendation.

The RySG supports this purpose as written. Registries operate under diverse and innovative business models, and inclusion of this purpose is important in order to allow those registries that rely on validation of registration eligibility criteria to continue to operate in a GDPR compliant manner. Possible examples of validation (as noted in the initial report) include: (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]. The RySG understands that this purpose is not, or will not be, applicable to all Registries, however, for those Registries requiring this purpose it is appropriate.

28. Enter additional comments to Recommendation #1.

The EPDP Team must revisit each of the workbooks and conduct a proper and thorough analysis of all processing activities and each data element identified as being required to fulfill every purpose. Because of the extensive interrelationship among issues and data elements, it will be important for the EPDP Team to conduct consistency reviews to ensure that any changes arising from the public comment period are applied consistently. In addition, the RySG continues to advocate for a data audit and mapping approach to determining purposes and the roles and responsibilities of involved parties. This important analysis is still absent.

Question #1 for Community Input: Purposes for Processing Registration Data

29. If you recommend additional purposes for processing registration data, please enumerate and write them here, keeping in mind compliance with GDPR.

Echoing the explanation found on page 89 of the Initial Report, the RySG urges the EPDP team to ensure clarification as to the definition of 'ICANN purposes' as it applies to the report, as it remains unclear, and should not be relegated to a footnote. The RySG urges further clarification that the purposes as stated, are notwithstanding any established purposes of either ICANN or individual registries or registrars, who may design and establish their own additional purposes, in which they would be acting as sole controller.

30. For each additional purpose identified above, please enumerate and provide rationale for each of them.

Section 3, Part 1: Purposes for Processing Registration Data (Continued)

Recommendation #2: Standardized Access

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

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

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

32. Choose your level of support of Recommendation #2:

Mark only one oval.

Support recommendation as written Support

intent of recommendation with edits

Intent and wording of this recommendation requires amendment

Delete recommendation

33. Do you recommend a change to the wording of Recommendation 2? If so, please indicate proposed edits here.

34. Please include the rationale for your answers here.

The RySG doesn't believe that the purpose of recommendations is to reiterate that work in the Charter will be done. Unless the recommendation is to 1) amend the Charter, or 2) alter the implementation of the Charter, then it should be assumed that the ePDP will address all in scope issues during its period of work.

The RySG is committed to continuing to work with the EPDP Team on the topic of how to provide access to non-public registration data, including the consideration of the questions included in the text of Recommendation #2, once the Phase 1 work and completion of answers to the gating questions in the Charter, is complete.

Should the EPDP see fit not to accept our recommendation to delete, then we remind the Team that the proper terminology that should be used, and as discussed by the EPDP team, is "request for disclosure" and not "access."

35. Enter additional comments for Recommendation #2.

Recommendation #3: Contractual Accuracy Requirements

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.

36. Choose your level of support of Recommendation #3:

Mark only one oval.

Support recommendation as written

Support intent of recommendation with edits

Intent and wording of this recommendation requires amendment

Delete recommendation

37. Do you recommend a change to Recommendation 3? If so, please indicate proposed edits here.

38. Please include the rationale for your answers here.

39. Enter any other additional comments or observations you have on Section 3 Part 1

that are not covered by these questions.

Accuracy, insofar as the GDPR requires, primarily relates to the requirement that the data provided to the Data Controller / Processor is recorded accurately and is kept up to date, with the data subject's reasonable instructions. (e.g. where the data subject notifies you of an inaccuracy, the data must be changed without undue delay).

Whereas, it is accepted that data controllers must make reasonable efforts to ensure the accuracy of the data they process; however, such reasonable efforts must be linked to practical matters such as:

- the likelihood of harm or damage to the DATA SUBJECT of an inaccuracy
- the use of the data by the controller (and whether the decisions made, by the controller, as a result of the data significantly affect the individual concerned, or others)
- the nature of the data processed
- the ability of the controller to verify accuracy with due regard to practical matters such as ability, technology and the cost of implementation (again all balanced against the potential impact to the rights of the data subject)

It is submitted therefore that the current regime for accuracy, especially considering the most recent ARS report on WHOIS accuracy (Cycle 6) (June 2018) noted postal address operability is 99% and postal address syntax accuracy is 88% (up from 80% three years earlier). ICANN's own key findings include that "nearly all WHOIS records contained information that could be used to establish immediate contact: In 98 percent of records, at least one email or phone number met all operability requirements of the 2009 RAA..

In light of this report, it would appear that the accuracy requirements as contained in the RAA are objectively sufficient and reasonable, for the purpose to which the data is put.

We submit, therefore, that no change to the recommendation is currently necessary.

Section 3, Part 2: Required Data Processing Activities

Recommendation #4: Data Elements

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

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

Domain Name** Registry
Domain ID** Registrar
Whois Server** Registrar
URL** Updated Date**
Creation Date** Registry

Expiry Date**
Registrar Registration Expiration Date**
Registrar**
Registrar IANA ID**
Registrar Abuse Contact Email**
Registrar Abuse Contact Phone**
Reseller**
Domain Status**
Registry Registrant ID**
Registrant Fields:
• Name
• Organization (optional)
• Street
• City
• State/province
• Postal code
• Country
• Phone
• Phone ext (optional)
• Fax (optional)
• Fax ext (optional)
• Email
Tech ID (optional)
Tech Fields:
• Name (optional)
• Phone (optional)
• Email (optional)
Name Server
DNSSEC (optional)
Name Server IP Address**
Last Update of Whois Database**

Additional optional data elements as identified by Registry Operator in its registration policy, such as (i) status as Registry Operator Affiliate or Trademark Licensee [.MICROSOFT]; (ii) membership in community [.ECO]; (iii) licensing, registration or appropriate permits (.PHARMACY, .LAW] place of domicile [.NYC]; (iv) business entity or activity [.BANK, .BOT]

Question #2 for Community Input

41. Do you agree that all these data elements should be collected / generated to achieve the Purposes identified in the Initial Report?

Mark only one oval.

For questions 41, 53 and 62, the RySG will not provide an answer of "yes" or "no," because our position is that a discussion and analysis of the data elements must take place.

Yes

No

42. If your answer is 'no', please enumerate which data elements should not be collected / generated.

The RySG notes that the EPDP Team did not engage in a thorough discussion about the individual data elements that are required to be collected by the registrar to fulfill the identified Purposes. The RySG defers comment on this recommendation, pending EPDP WG discussion and analysis of all individual data elements identified in Preliminary Recommendation 4.

In addition, the publication system (RDDS) matters as it impacts the answer for specific data elements. For example, consider “Registrar Abuse Email”. If the registrar is going to participate in the RDDS, then the registry does not need this information and it does not need to be collected since the registrar may simply generate it and publish as appropriate. On the other hand, if the registrar does not participate in the RDDS, then this needs to be generated by the registrar, passed to the registry, and then published by the registry as appropriate.

43. Please provide the rationale for your answer.

The EPDP Team did not specifically discuss and analyze each of the individual data elements identified in Preliminary Recommendation 4. It must do so, and revise the recommendation as appropriate. The RySG is willing and available to contribute to this analysis as the EPDP Team needs. Further, the EPDP Team should explain why the automatically generated data elements are included. Finally, in cases where registry operators identify additional data elements in their registration policies, it is those registries - not registrars - that either collect or require the collection and processing of the “additional optional data elements as identified by Registry Operator in its registration policy.” The wording of the recommendation should be revised accordingly.

44. If you believe additional data elements should be collected / generated, please enumerate which additional elements should be collected / generated.

The RySG does not believe the consensus policy should require additional elements to be collected/generated.

45. Please provide the rationale for your answer.

The scope of this EPDP is not to contemplate adding additional data elements, but rather to consider the Temporary Specification and either approve the requirements contained therein, or make necessary modifications to bring the RDDS requirements into compliance with GDPR.

Recommendation #4 Continued: Optional Data Elements

The EPDP Team recommends that the following data elements are optional for the Registered Name Holder (RNH) to provide:

- technical contact name
- technical contact email and
- technical contact phone number

The EPDP Team has discussed two definitions of the term “optional” as used in this recommendation:

(1) registrars must offer the data field and registrants can decide whether to fill in the field or leave in blank (in which case the query would return the registered name hold data; OR

(2) registrars can offer this field at their option

46. Should the technical contact fields be optional or mandatory (where mandatory means the registrar must offer the fields AND the RNH must fill in information)?

Mark only one oval.

Optional

Mandatory

47. Please provide the rationale for your answer.

The RySG views this issue through the lens of Purpose 1. That Purpose references the Registered Name Holder (not the technical contact) and the existence of a technical contact is not necessary to complete the activities encompassed by Purpose 1.

48. If your answer is 'optional', should registrars be required to offer these technical contact fields?

Mark only one oval.

Yes

No

49. Please provide the rationale for your answer.

RySG comment: The consensus policy should bear in mind the GDPR principle of data minimization. While there may be cases where registrars wish to provide their customers with the ability to designate a technical contact in addition to the registrant, and can provide a legal basis or justification for doing so, the RySG believes that registrars should not be universally required to collect additional contact fields. As such, it should be optional for the registrar to offer technical contact fields.

50. The EPDP team recommends that contact information for billing and administrative contacts should not be collected. Do you agree that this information should not be collected?

Mark only one oval.

Yes

No

51. Please provide the rationale for your answer.

The RySG understands that registrars do not generally rely upon the contact information provided for the billing and administrative contacts to handle billing and administrative matters. Accordingly, these contacts appear to have outlived their usefulness and no longer merit

collection under GDPR.

Additionally, refer to the response to Question 49. The consensus policy should respect the principle of data minimization. Registrars should not be required by the policy to collect contact information for additional contacts, especially where the policy itself considers the data to be optional (i.e., not necessary for the purpose).

52. Enter additional comments for Recommendation #4 here.

Recommendation #5: Transmission of Data from Registrar to Registry

The EPDP Team recommends that the specifically -identified data elements under “[t]ransmission of registration data from Registrar to Registry” within the data elements workbooks must be transferred from Registrar to Registry. In the aggregate, these data elements are the same as those in Recommendation #4 for the reasons stated in the Data Workbooks found in Annex D of the Initial Report.

53. Do you agree that all these data elements should be transferred from the registrar to the registry?

Mark only one oval.

For questions 41, 53 and 62, the RySG will not provide an answer of "yes" or "no," because our position is that a discussion and analysis of the data elements must take place.

Yes

No

54. If your answer is ‘no’, please enumerate which data elements should not be transferred from the registrar to the registry.

The RySG notes that the EPDP Team did not engage in a thorough discussion about the individual data elements that are required to be transferred from the registrar to the registry to fulfill the identified Purposes. The RySG defers comment on this recommendation, pending EPDP WG discussion and analysis of all individual data elements identified in Preliminary Recommendation 5.

55. Please provide the rationale for your answer.

The EPDP Team did not specifically discuss and analyze each of the individual data elements identified in Preliminary Recommendation 5. It must do so, and revise the recommendation as appropriate. The RySG is willing and available to contribute to this analysis as the EPDP Team needs.

56. Enter additional comments for Recommendation #5 here.

In conducting its analysis of the data elements required to be transferred from the registrar to the registry, the RySG urges the EPDP Team to bear in mind that gTLDs are operated in diverse and varied ways. The ultimate recommendation that becomes part of the consensus policy should focus on establishing minimum requirements that are flexible enough to account for those different business and operating models.

Recommendation #6: Transmission of Data to Data Escrow Providers

1. The EPDP Team recommends that ICANN Org enter into legally -compliant data processing agreements with the data escrow providers.
2. The EPDP Team recommends updates to the contractual requirements for registries and registrars to transfer data that they process to the data escrow provider to ensure consistency with the data elements workbooks that analyze the purpose to provide mechanisms for safeguarding Registered Name Holders' Registration Data.
3. The data elements workbook that analyzes the purpose to provide mechanisms for safeguarding Registered Name Holders' Registration Data contains the specifically-identified data elements the EPDP Team recommends be transferred by Registries and Registrars to data escrow providers (see Annex D, Workbook 4).

57. Choose your level of support of Recommendation #6:

Mark only one oval.

Support recommendation as written

Support intent of recommendation with edits

Intent and wording of this recommendation requires amendment

Delete recommendation

58. If your response requires an edit or deletion of Recommendation #6, please indicate the revised wording here. Additionally, please enumerate which data elements should not be transferred from the registrar/registry to the data escrow provider.

The EPDP Team did not specifically discuss and analyze each of the individual data elements identified in Preliminary Recommendation 6. It must do so, and revise the recommendation as appropriate. The RySG is willing and available to contribute to this analysis as the EPDP Team needs.

In conducting this analysis, the EPDP Team should bear in mind that no additional data elements should be required to be collected by the registrar or transferred from the registrar to the registry solely to achieve this purpose. Rather, the data elements required to be transferred to the data escrow agents should be derived ONLY from the set of data elements required to be collected by the registrar and transferred from the registrar to the registry in fulfillment of Purposes 1, 3, 6 or 7.

Further, in the Final Report, the recommendation should not reference the workbook but should be worded as a standalone recommendation that describes what data elements Contracted Parties are required to transfer to the data escrow providers.

59. Please provide the rationale for your answer.

While the RySG acknowledges that safeguarding the registration data may be a legitimate processing activity, it does not in and of itself justify the collection or transferring of any additional data elements that are not already collected and transferred for more primary purposes. It is critical for the data elements workbooks to reflect this and for the entire policy to be consistent.

60. Enter additional comments for Recommendation #6 here.

The RySG understands that at least one data escrow provider submitted several months ago to ICANN for ICANN's required approval a template data processing amendment to that provider's Registry Operator escrow agreements. Such an amendment could fulfill part 2 of Recommendation 6 once ICANN approves it.

Recommendation #7: Transmission of Data from Registries/Registrars to ICANN Compliance

1. The EPDP Team recommends that updates are made to the contractual requirements for registries and registrars to transfer to ICANN Compliance the domain name registration data that they process when required/requested, consistent with the data elements workbook that analyzes the purpose to handle contractual compliance monitoring requests, audits, and complaints submitted by Registry Operators, Registrars, Registered Name Holders, and other Internet users (see Annex D, Workbook 5).
2. The data elements workbook that analyzes the purpose to handle contractual compliance monitoring requests, audits, and complaints submitted by Registry Operators, Registrars, Registered Name Holders, and other Internet users contains the specifically -identified data elements the EPDP Team recommends be transferred from registries and registrars to ICANN Compliance (see Annex D, Workbook 5).

61. Choose your level of support of Recommendation #7:

Mark only one oval.

Support recommendation as written

Support intent of recommendation with edits

Intent and wording of this recommendation requires amendment

Delete recommendation

62. Do you agree that all of these data elements should be transferred from the registrar to ICANN?

Mark only one oval.

For questions 41, 53 and 62, the RySG will not provide an answer of "yes" or "no," because our position is that a discussion and analysis of the data elements must take place.

Yes

No

63. If your answer is 'no', please enumerate which data elements should not be transferred from the registrar to ICANN.

The EPDP Team did not specifically discuss and analyze each of the individual data elements identified in Preliminary Recommendation 7. It must do so, and revise the recommendation as appropriate. The RySG is willing and available to contribute to this analysis as the EPDP Team needs.

In conducting this analysis, the EPDP Team should bear in mind that no additional data elements should be required to be collected by the registrar or transferred from the registrar to the registry solely to achieve this purpose. Rather, the data elements required to be transferred to the data escrow agents should be derived ONLY from the set of data elements required to be collected by the registrar and transferred from the registrar to the registry in fulfillment of Purposes 1, 3, 6 or 7.

Further, in the Final Report, the recommendation should not reference the workbook but should be worded as a standalone recommendation that describes what data elements Contracted Parties are required to transfer to the data escrow providers.

64. Please provide the rationale for your answer.

While the RySG acknowledges that ICANN's compliance activities may be legitimate processing activities, it does not in and of itself justify the collection or transferring of any additional data elements that are not already collected and transferred for more primary purposes. It is critical for the data elements workbooks to reflect this and for the entire policy to be consistent.

65. Enter additional comments for Recommendation #7 here.

Recommendation #8: Data Redaction

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 in a freely accessible directory.

NOT REDACTED

Domain Name

Registrar Whois Server

Registrar URL Updated

Date

Creation Date Registry

Expiry Date

Registrar Registration Expiration Date

Registrar

Registrar IANA ID

Registrar Abuse Contact Email

Registrar Abuse Contact Phone

Reseller

Domain Status

Registrant Fields

- State/province
- Country
- Anonymized email / link to web form

Tech Fields

- Anonymized email / link to web form

NameServer(s) DNSSEC No

Name Server IP Address

Last Update of Whois Database

REDACTED

Registrant Fields

- Name

- Street
- City
- Postal code
- Phone
- Email

Tech Fields

- Name
- Phone
- Email

UNDECIDED (REDACTED/ NOT REDACTED)

- Organization (opt.)

Please reference page 14-15 of the Initial Report for details of the data elements.

66. Do you agree that all of these data elements should be redacted?

Mark only one oval.

Yes

No

67. If your answer is 'no', please enumerate the data elements that should not be redacted.

68. Please provide the rationale for your answer.

The RySG supports the recommendation that the fields designated in Recommendation 8 should be redacted in the registration data directories that Contracted Parties are required to operate. However, the requirement to publish the remaining data elements in a “freely accessible directory” raises concerns for the RySG given the open-ended and imprecise nature of the language. The RySG proposes changing this language to “appear via free public based query access.”

Further, the RySG recommends refining Recommendation 8 to include a provision that, in the event a Contracted Party collects additional data elements not included in the list enumerated in the recommendation, the Contracted Party should be permitted to redact those data elements, at its discretion.

69. The EPDP Team is of divided opinion as to whether "Organization" should be redacted for reasons stated in the Initial Report. Please see the Initial Report, beginning on p. 42. Should the "Organization" field be redacted?

Mark only one oval.

Yes

No

70. Please provide rationale for your answer above.

The RySG notes that there are a great many instances where the Organization field of a domain registration record contains personal data of natural persons, such as the name of registrant. There is no way for Contracted Parties to understand the Registered Name Holder's intention or motivation behind inputting this type of data in such cases. Given the hundreds of millions of existing domain registrations, requiring contracted parties to publish the Organization field in publicly accessible domain registration databases would inevitably result in the publication of personal data that could result in violations of the GDPR.

At this point in time, Contracted Parties cannot rely on domain registrants to only provide the names of legal organizations, rather than personal data, in the Organization field. The RySG understands that the EPDP is seeking additional legal guidance on this topic, and once that guidance is received, we may be willing to revisit this position. However, at this time, the RySG believes that the policy should allow registries to take a conservative approach to compliance by allowing the Organization field to be redacted.

71. Enter additional comments for Recommendation #8.

While the RySG supports the substance of Recommendation #8, we believe the wording could be more clear by stating upfront which data fields should be redacted in the public registration data output.

Recommendation #9: Organization Field

The EPDP Team recommends that registrars provide further guidance to a Registered Name Holder concerning the information that is to be provided within the Organization field. (For further information, please refer to the Initial Report discussion, beginning on p. 42).

72. Choose your level of support of Recommendation #9:

Mark only one oval.

Support recommendation as written

Support intent of recommendation with edits

Intent and wording of this recommendation requires amendment

Delete recommendation

73. If your response requires an edit or deletion of Recommendation #9, please indicate the revised wording here.

74. Please provide the rationale for your answer.

The RySG cautions against assuming that the provision of extra educational materials, as being capable of rectifying a defect in the clarity of the process. If the process itself is not capable of being understood by the data subject, then the mere availability of additional, and separate, educational materials will not likely suffice.

75. Additional comments for Recommendation #9.

The RySG echoes the concern a noted in the Initial Report regarding over reliance on educational resources as a cure to failings in the process. Educational resources should be complementary to a clearly-presented system of data collection and onward processing. They should not be seen as a required supplement, to provide necessary aids to comprehending the system. As such, where additional 'educational resources' are considered a necessity to ensure compliance, this may not be considered to be compatible with the concepts of privacy by default or privacy by design, i.e., where additional 'educational resources' are deemed necessary, the process itself is likely not established or presented in a sufficiently clear manner.

Recommendation #10: Provision of Email Address/Web Form

In relation to facilitating email communication between third parties and the registrant, the EPDP Team recommends that current requirements in the Temporary Specification that specify that a Registrar **MUST** provide an email address or a web form to facilitate email communication with the relevant contact, but **MUST NOT** identify the contact email address or the contact itself, remain in place.

76. Choose your level of support of Recommendation #10:

Mark only one oval.

Support recommendation as written

Support intent of recommendation with edits

Intent and wording of this recommendation requires amendment

Delete recommendation

77. If you believe edits are needed for Recommendation #10, please propose edits here.

The RySG suggests the following edits to Recommendation #10:
“The EPDP Team recommends that registrars must provide a mechanism to facilitate email communication with the Registered Name Holder or contact, but must not identify the contact email address or the contact itself.”

78. Please provide the rationale for your answer.

The RySG supports the intent of Recommendation #10, but notes that it only reflects two options for registrars to facilitate communication with the relevant contact. There may be instances where registrars choose to offer other methods of contact, and the recommendation should provide registrars with the flexibility to offer such methods.

In the Final Report, the RySG believes that policy recommendations should be standalone recommendations and not reference the Temporary Specification.

79. Additional comments for Recommendation #10.

The RySG will caution against the use of an email relay system, as such a system, without proper controls may have unintended data disclosure (e.g., auto-replies, Out Of Office notifiers).

The RySG also, noting the discussions of the EPDP team, would strongly resist any suggestion as to the necessity of the Registrar in ‘confirming’ delivery. Such a ‘service level’ approach is unrealistic, and this recommendation, at its highest must be only taken as a ‘pass on’ requirement and should not give rise to any unreasonable expectations on the registrars to ‘verify’ receipt of such a communication.

Recommendation #11: Data Retention

The EPDP Team recommends that Registrars are required to retain the herein -specified data elements for a period of one year following the life of the registration. This retention period conforms to the specific statute of limitations within the Transfer Dispute Resolution Policy (“TDRP”).

80. Choose your level of support of Recommendation #11:

Mark only one oval.

Support recommendation as written

Support intent of recommendation with edits

Intent and wording of this recommendation requires amendment

Delete recommendation

81. If you do not support Recommendation #11, please provide proposed edits here.

The RySG recommends editing Recommendation #11 as follows:

“The EPDP Team recommends that Registrars are required to retain the herein -specified data elements for a period of one year following the life of the registration.”

82. Please provide the rationale for your answer.

- 1) The use of the term ‘statute of limitations’ is incorrect.
- 2) Additionally the retention period should merely be set/stated, and not linked to a specific applicable requirement. The rationale as to why 1 year is set should be documented in full, but should not be included in the recommendation itself.
- 3) The recommendation should not preclude any registrar from choosing to retain data for a longer period of time than 1 year, in accordance with their specific business needs and applicable laws For the avoidance of doubt, any additional retention periods which a registrar may see fit to implement, will be the sole responsibility of that registrar.

83. Additional comments for Recommendation #11.

The RySG cautions the over reliance on just identifying the limitation for the TDRP. Note that if a retention period is specifically linked to data retained for a specific purpose, data retained beyond the minimum, may ONLY be used for that purpose. Whereas we completely encourage the identification of the necessity for different limitation periods, thus linking retention to specific and measurable periods, the ePDP should compile all specific grounding limitation periods to ensure the ongoing use for such purposes.

Furthermore, the IRTP Policy Status Report is currently out for public comment and could lead to work that changes the TDRP retention period.

Question 3 for Community Input: Differentiating Registrants: Legal v. Natural Persons; and Effects of Geographic Location

84. What other factors should the EPDP team consider about whether Contracted Parties should be permitted or required to differentiate between registrants on a geographic basis? (For more information, please refer to the Initial Report, beginning on p. 47.

RySG comment: The RySG urges the EPDP team to consider the realistic effects of any recommendation that requires a delineation on geographic basis. The RySG reminds the EPDP Team that any recommendations made must ensure:

- A) that the rights of the data subject are best vindicated and protected;
- B) that due consideration is given to the state of the art, the nature of the data processed, and the cost of implementation to the contracted parties;
- C) that the focus of the EPDP recommendations remain in scope, i.e., that recommendations are based on whether the temporary specification, as written, or with modification as necessary, is capable of bringing the contracted parties into compliance with the requirements

of the GDPR. The creation of new obligations on the CPH which are not necessary for such compliance, are not in scope for this process.

The RySG reminds the EPDP team that there remain numerous considerations which, in our opinion, make a delineation on geographic basis, untenable; to the fore is the inability to adequately identify, with any degree of certainty, whether or not a particular registrant is subject to the GDPR. The ePDP team have provided no clarity as to how geographic delineation would be achieved with current technology and process, merely a suggestion from some quarters, that it MUST occur, or more worryingly, that additional data elements be collected to prop up an untested consent based delineation. The CPH members of the EPDP, are on record as having repeatedly expressed their frustration with such suggested recommendations, in the face of impossible and unrealistic expectations in implementation.

For the avoidance of doubt, the RySG does not believe a “rules engine” is an acceptable “solution” and does not support the development of one. Further, the EPDP Team must take into account the widespread use by registry operators of backend providers, which may or may not be in the same jurisdiction as the registry operator and may or may not process data in the EU. This additional processing activity further complicates any potential geographic distinction.

To reiterate, under GDPR, it is not sufficient for contracted parties to make this jurisdictional distinction in most cases, or even in nearly all cases. Contracted parties must get this right for all registrants or else the significant sanctions associated with violations of GDPR may apply. As a result, it is the edge cases that matter and until the community can demonstrate that these hard cases can be addressed accurately and reliably, contracted parties should not be required to onboard such significant liability.

The RySG notes that the EPDP are not tasked with reinventing the DNS system. The Temporary Specification, as written, permits a registry / registrar to process data in a compliant manner. No change to the Temp Spec is therefore strictly necessary.

85. Please provide the rationale for your above answer.

See response to Question 84.

86. Are there any other risks associated with differentiation of registrants on a geographic basis? If so, please identify those factors and/or risks and how they would affect possible recommendations, keeping in mind compliance with the GDPR.

See response to Question 84.

87. What other factors should the EPDP team consider about whether Contracted Parties should be permitted or required to differentiate between natural and legal persons?

The EPDP team is urged to consider the realistic effects of any recommendation that requires a delineation on natural/legal person basis. The RySG reminds the EPDP Team that any recommendations made must ensure:

- A) that the rights of the data subject are best vindicated and protected;
- B) that due consideration is given to the state of the art, the nature of the data processed, and the cost of implementation to the contracted parties;
- C) that the focus of the ePDP recommendations remain in scope, i.e., that recommendations are based on whether the temporary specification, as written, or with modification as necessary, is capable of bringing the contracted parties into compliance with the requirements of the GDPR. The creation of new obligations on the CPH which are not necessary for such compliance, are not in scope for this process.

The RySG reminds the EPDP team that there remain numerous considerations which, in our opinion, make a delineation on legal / natural person, untenable; to the fore is the inability to adequately identify, with any degree of certainty, whether or not a particular registrant is subject to the GDPR or not. The EPDP team have provided no clarity as to how such a delineation would be achieved with current technology and process, merely a suggestion from some quarters, that it MUST occur, or more worryingly, that additional data elements be collected to prop up an untested consent based delineation. The CPH members of the EPDP, are on record as having repeatedly expressed their frustration with such suggested recommendations, in the face of impossible and unrealistic expectations in implementation.

To reiterate, under GDPR, it is not sufficient for contracted parties to make this distinction in most cases, or even in nearly all cases. Contracted parties must get this right for all registrants or else the significant sanctions associated with violations of GDPR may apply. As a result, it is the edge cases that matter and until the community can demonstrate that these hard cases can be addressed accurately and reliably, contracted parties should not be required to onboard such significant liability.

The RySG notes that the ePDP are not tasked with reinventing the DNS system. The Temporary Specification, as written, permits a registry / registrar to process data in a compliant manner. No change to the Temp Spec is therefore strictly necessary.

88. Please provide the rationale for your above answer.

See response to Question 87.

89. Should there be further study as to whether whether procedures would be feasible to accurately distinguish on a global scale whether registrants/contracted parties fall within jurisdiction of the GDPR or other data protection laws? Please provide a rationale.

The RySG would pose the question as to how research of other, as of yet untested applications, in different industries, or even in domain name registration outside of the ICANN construct, would be beneficial. Review of the deliberations thus far has provided the team with on the record statements as to the current unavailability of the adequate technological means

to implement any such mandatory delineation, that may be considered to be expert opinion, based on experience of both day to day implementation concerns as to available technology, implementation difficulties and on the basic feasibility of such a policy recommendation for all members of the CPH, from small scale, to large. We are unsure as to why further delay and expense regarding 'further research' is considered to be necessary here.

90. Are you aware of existing examples where a legal/natural differentiation is already made and could it apply at a global scale for purposes of registration data? If yes, please provide additional information.

No.

Recommendation #12: Reasonable Access

The EPDP Team recommends that the current requirements in the Temporary Specification in relation to reasonable access remain in place until work on a system for Standardized Access to Non-Public Registration Data has been completed, noting that the term should be modified to refer to "parameters for responding to lawful disclosure requests." Furthermore, the EPDP Team recommends that criteria around the term "reasonable" are further explored as part of the implementation of these policy recommendations addressing:

- o [Practicable]* timelines criteria for responses to be provided by Contracted Parties;
- o Format by which requests should be made and responses are provided;
- o Communication/Instructions around how and where requests should be submitted;
- o Requirements for what information responses should include (for example, auto -acknowledgement of requests and rationale for rejection of request);
- o Logging of requests.

[*Some concern expressed that timeliness that should not be translated into requirements that are impractical for contracted parties].

91. Choose your level of support of Recommendation #12:

Mark only one oval.

Support recommendation as written

Support intent of recommendation with edits

Intent and wording of this recommendation requires amendment

Delete recommendation

92. If you believe edits are needed for Recommendation #12, please propose them here.

The RySG recommends the following edits to Recommendation #12:
"The EPDP Team recommends that the current requirements in the Temporary Specification in relation to reasonable access remain in place until work on the second phase of the EPDP Charter on data access issues is addressed, noting that the term should be modified to refer to '**parameters for responding to lawful disclosure requests.**' During the second phase of the ePDP Charter work, the EPDP Team expects that criteria around the term 'reasonable'

may be further explored.”

93. Please provide the rationale for your answer.

The RySG has noted its concern that repeated efforts by some EPDP Team members to focus on access to, and/or disclosure of, data in the initial phases of the EPDP’s work has significantly hampered the group’s ability to make progress on the core issues of defining purposes for data collection and the roles and responsibilities of parties. The Charter explicitly states that data access questions are to be addressed in the second phase of the EPDP. Therefore, inclusion of this recommendation, as written, is premature and serves to predetermine the issue to be discussed. The RySG looks forward to discussing these issues in the second phase of the EPDP’s work.

94. Additional comments for Recommendation #12.

The RySG has consistently stated its willingness to discuss access to data by third-parties as part of the second phase of the EPDP as outlined in its Charter, including discussion of an access model for lawful data access requests. The RySg looks forward to engaging with EPDP members to identify processes to streamline third-party data access requests and potential disclosure.

Recommendation #13: Joint Controller Agreements

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

In addition to the legally required components of such agreement, the JCA shall specify the responsibilities of the respective parties for the processing activities as described below. Indemnification clauses shall ensure that the risk for certain data processing is borne by either one or multiple parties that have the primary interest in the processing.

95. Choose your level of support of Recommendation #13:

Mark only one oval.

Support recommendation as written

Support intent of recommendation with edits

Intent and wording of this recommendation requires amendment

Delete recommendation

96. If you believe changes are needed for Recommendation #13, please provide proposed edits here.

The RySG suggests the following edits to Recommendation #13:

“The EPDP Team recommends that ICANN Org negotiates and 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 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 shall ensure that the risk for certain data processing is borne by either one or multiple parties that determine the purpose and means of the processing.”

97. Please provide the rationale for your answer.

While the RySG acknowledges the deliberations and work undertaken by the EPDP Team on this matter, we believe that ICANN Org and the Contracted Parties should work together to determine not only the terms of the agreements, but which type of agreement best reflects the realities of the domain name ecosystem and the roles each party plays in the required data processing activities.

98. Additional comments for Recommendation #13.

Some Registries strongly believe that a Joint Controller Agreement (“JCA”) is the most appropriate form for a data protection agreement between ICANN and Contracted Parties because it (i) specifically allocates factual responsibility for data processing, (ii) defines and controls each party’s liability, and (iii) provides required transparency for data subjects. Under a JCA, ICANN and Contracted Parties can clearly structure their data processing relationship by defining roles and responsibilities where purposes and means of processing are shared. This approach more accurately reflects the complexities of the domain registration process and likely aligns with how DPAs would view the data processing performed by the parties, regardless of whether parties self-designate as sole controllers.

The RySG also reiterates that speculation about future models for access should not influence the form of a data processing agreement between the parties. The RySG has previously raised concerns regarding the feasibility of a Unified Access Model (“UAM”). However, setting aside issues with the merits of that proposal, an arrangement where ICANN is solely responsible for decision-making regarding the disclosure of data to third parties is not prohibited merely because ICANN is party to a JCA with Contracted Parties. ICANN retains the flexibility to act as a sole controller outside of the shared purposes with Contracted Parties.

99. Enter any other additional comments or observations you have on Section 3, Part 2 that are not covered by these questions.

Section 3, Part 3: Data Processing Terms

Recommendation #14: Data Processing Roles & Responsibilities

The EPDP Team recommends that the policy includes the following data processing activities as well as responsible parties. Please reference the Initial Report, beginning on p. 63 for further details.

100. Choose your level of support of Recommendation #14:

Mark only one oval.

Support recommendation as written

Support intent of recommendation with edits

Intent and wording of this recommendation requires amendment

Delete recommendation

101.If you do not agree with the enumerated data processing activities and responsible parties, please provide proposed edits, including specific processing activities that need to be added/deleted here. The EPDP team particularly seeks feedback with the assignment of roles such as: “joint-controller,” “controller,” and “processor.

The Initial Report indicates which actors are “Responsible Parties” for the data processing activities that correspond to each Purpose. However, the term “responsible party” is not a defined term under the GDPR and does nothing to indicate which party is the controller or processor, or whether the parties may be joint controllers, for each processing activity.

The EPDP Team did not specifically discuss and analyze the roles and responsibilities of each party for any of the processing activities required for any of the Purposes. It must do so, and revise the recommendation as appropriate. The RySG is willing and available to contribute to this analysis as the EPDP Team needs.

102. Please provide your rationale for the proposed addition/deletion.

A party’s involvement in a given processing activity – or whether it has some “responsibility” with regard to that processing activity – does not automatically indicate its role and responsibility under the GDPR. The EPDP Team must analyze each processing activity required for each purpose to determine which party determines the means and purposes of processing to identify which party is the controller (or potentially which parties are joint controllers, or independent controllers). This level of analysis has not yet been conducted by the EPDP Team, and as such, this recommendation cannot yet be finalized.

103. Additional comments for Recommendation #14.

Section 3, Part 4: Updates to Other Consensus Policies

106. Enter any general comments or observations you may have on the findings in Section 3, Part 4.

Recommendation #15: Uniform Rapid Suspension/Uniform Domain Name Dispute Resolution Policy Requirements

The EPDP Team recommends that for the new policy on gTLD registration data, the requirements of the Temporary Specification are maintained in relation to URS and UDRP until such time as these are superseded by recommendations from the RPMs PDP WG (if any).

107. Choose your level of support of Recommendation #15:

Mark only one oval.

Support recommendation as written

Support intent of recommendation with edits

Intent and wording of this recommendation requires amendment

Delete recommendation

108. If you do not agree that the current updated requirements in the UDRP and URS, as provided in the Temporary Specification should remain in place, please provide proposed edits to the current requirements.

The RySG recommends the following edits to Recommendation #15:
“The EPDP Team recommends that the supplemental requirements for the URS and UDRP, as set forth in Appendices D and E to the Temporary Specification, respectively, be maintained for the new policy on gTLD registration data until these supplemental requirements are superseded by recommendations from the RPMs PDP WG (if any).”

109. Please provide the rationale, keeping in mind compliance with GDPR.

The proposed revision clearly identifies the portions of the Temporary Specification that set forth URS- and UDRP-related requirements.

110. Additional comments for Recommendation #15.

Implementation of Recommendation #18 (data processing agreements with dispute resolution providers) is a prerequisite for implementation of Recommendation #15. Necessary data processing agreements must be in place before data is transferred to the dispute resolution providers.

Recommendation #16: Instruction to GNSO and Rights Protection Mechanisms Policy Development Working Group

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.

111. Choose your level of support of Recommendation #16:

Mark only one oval.

Support recommendation as written

Support intent of recommendation with edits

Intent and wording of this recommendation requires amendment

Delete recommendation

112. If you do not support Recommendation #16, please provide proposed text/edits.

113. Please provide the rationale for your answer.

114. Provide additional comments for Recommendation #16 here.

Recommendation #17: UDRP/URS

The EPDP Team requests that when the EPDP Team commences its deliberations on a standardized access framework, a representative of the RPMs PDP WG shall provide an update on the current status of deliberations so that the EPDP Team may determine if/how the WG's recommendations may affect consideration of the URS and UDRP in the context of the standardized access framework deliberations.

115. Choose your level of support of Recommendation #17:

Mark only one oval.

Support recommendation as written

- Support intent of recommendation with edits
- Intent and wording of this recommendation requires amendment
- Delete recommendation

116. If you do not support Recommendation #17, please provide proposed edits or changes.

117. Please provide the rationale for your answer.

118. Provide additional comments for Recommendation #17 here.

Recommendation #18: Data Processing Agreements

The EPDP Team recommends that ICANN Org must enter into data processing agreements with dispute resolution providers in which, amongst other items, the data retention period is specifically addressed, as this will affect the ability to have publicly- available decisions.

119. Choose your level of support of Recommendation #18:

Mark only one oval.

Support recommendation as written

- Support intent of recommendation with edits
- Intent and wording of this recommendation requires amendment
- Delete recommendation

120.If you do not agree to Recommendation #18, please provide proposed edits or changes here.

121. Please provide the rationale for your answer here.

122. Provide additional comments for Recommendation #18 here.

It is imperative that ICANN Org promptly enter into data processing agreements with dispute resolution providers.

Question #4 for Community Input

123. Are there any changes that the EPDP Team should consider in relation to the URS and UDRP that have not already been identified?

No. The EPDP Team should consider in this phase of the work only those items required for GDPR compliance, which the RySG believes has been done.

124. If so, please provide the relevant rationale, keeping in mind compliance with the GDPR.

Recommendation #19: Transfer Policy

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

125. Choose your level of support of Recommendation #19:

Mark only one oval.

Support recommendation as written

Support intent of recommendation with edits

Intent and wording of this recommendation requires amendment

Delete recommendation

126. If you do not support Recommendation #19, please provide proposed changes/edits here.

127. Please provide the rationale for your answer, keeping in mind compliance with GDPR.

128. Provide additional comments for Recommendation #19 here.

Recommendation #20: Transfer Policy

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.

129. Choose your level of support of Recommendation #20:

Mark only one oval.

Support recommendation as written

Support intent of recommendation with edits

Intent and wording of this recommendation requires amendment

Delete recommendation

130. If you do not support Recommendation #20, please provide proposed edits/changes here.

131. Please provide the rationale for your answer here.

132. Provide additional comments for Recommendation #20 here.

Question #5 for Community Input

133. Are there any changes that the EPDP Team should consider in relation to the Transfer Policy that have not already been identified? If so, please provide the

relevant rationale, keeping in mind compliance with the GDPR.

The RySG suggests that when reviewing the Transfer Policy, the GNSO Council should also consider whether changes to the Policy are needed to guard against unauthorized transfers.

134. Enter any other additional comments or observations you have on Section 3, Part 3 that are not covered by these questions.

Section 3: Other Recommendations

136. Enter any general comments or observations you may have on the findings in Section 3, Other Recommendation.

Recommendation #21: Joint Controller and Data Processing Agreements

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.

137. Choose your level of support of Recommendation #21:

Mark only one oval.

Support recommendation as written

Support intent of recommendation with edits

Intent and wording of this recommendation requires amendment

Delete recommendation

138. If you do not support Recommendation #21, please provide proposed edits/changes here.

139. Please provide the rationale for your answer here, keeping in mind compliance with GDPR.

140. Provide additional comments for Recommendation #21 here.

It is imperative that ICANN Org begin the process of entering into legally compliant agreements without delay, as the lack of agreements may have negative impacts on Contracted Parties.

Recommendation #22: Updates to Existing Consensus Policies

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

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

Please reference the Initial Report, beginning on p. 71 for further details.

141. Choose your level of support of Recommendation #22:

Mark only one oval.

Support recommendation as written

Support intent of recommendation with edits

Intent and wording of this recommendation requires amendment

Delete recommendation

142. If you do not support Recommendation #22, please provide proposed edits or changes here.

The RySG recommends the following edits to Recommendation #22:
“The EPDP Team recommends that as part of the implementation of policy recommendations, conforming updates are identified to existing policies / procedures to ensure consistency with policy recommendations.”

143. Please provide the rationale for your answer here.

The RySG recognizes that a general Recommendation to identify any necessary conforming edits to impacted consensus policies to ensure conformity with the resultant policy will be

important for continuity across policies. However, the RySG does not feel that the EPDP reached consensus on this issue and that further discussion within the group is required.

144. Provide additional comments on Recommendation #22 here.

The RySG could not identify any explicit instances where the EPDP Team has discussed which individual policies need to be updated, with the exception of the URS. While we agree with the importance of maintaining consistency across the wide variety of policies the EPDP touches on, we cannot express support for or advise changes to this recommendation at this time. In particular, we cannot express support or advise changes until further deliberations have been made to ensure the comprehensiveness and accuracy of such a list, which should be included as part of the implementation phase of this policy development process.

145. Enter any other additional comments or observations you have on Section 3: Other Recommendations that are not covered by these questions.

Other Comments & Submission

146. Are there any other comments or issues you would like to raise pertaining to the Initial Report? If yes, please enter your comments here. If applicable, please specify the section or page number in the Initial Report to which your comments refer.

The RySG appreciates the opportunity to submit comments on the EPDP Initial Report. Given the significant impact that the resulting consensus policy will have on Registry Operators, the RySG representatives to the EPDP Team have participated actively and in good faith, and are committed to continuing this participation.

While the RySG remains committed to supporting the work of the EPDP, we must express our concerns with the work methods that have been utilized thus far. We believe that far too much time was spent in the initial phase of work discussing the topic of providing third parties with access to registration data, despite the very clear directive in the EPDP Charter that discussions about access should not take place until the gating questions in the Charter were answered. Such discussions prevented the EPDP Team from engaging in the critical work of discussing and deliberating on foundational matters such as which data elements are required to fulfill various processing activities and purposes, and the roles and responsibilities of the parties involved in data processing. And although the Initial Report references the Charter questions, it does not provide answers to all of them. The amount of time discussing access, and other items outside the scope of the EPDP, led to a significant constriction of the already limited time available for the EPDP to issue an Initial Report. The result of this time crunch is that the EPDP Team did not have time to reach agreement on many of the recommendations that got included in the Initial Report.

As the EPDP embarks on the next phase of work to consider public comments and refine the content of the Initial Report into policy recommendations in a Final Report, we urge the EPDP to stay focused on the task at hand and keep discussions within scope. We encourage the Team to engage in the necessary discussions and deliberations around data elements and also to consider the matter of how the final policy recommendations will be implemented.