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Purpose 3

Initial Report Language:

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

Proposed Updated Language:

Enable communication with the Registered Name Holder on matters relating to the Registered Name.

Rationale:

Having taken careful note of all public comments received on this recommendation, Small Team B felt that the language could be simplified and clarified by referring to “issues” in general and removing the reference to ‘and/or their delegated agents’ as the use of “designated agent” is less clear under GDPR and the same purpose would apply to any delegated agents if the RNH is legally allowed to do so (removing the reference here would not alter that).

Purpose 4

Initial Report Language:

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.

Proposed Updated Language:

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 defined in the Registrar Accreditation Agreement and Registry Agreement, respectively.]

Rationale:

Having taken careful note of all public comments received on this recommendation, Small Team A noted the use of "or other unavailability" was ambiguous. The proposed language seeks to account for scenarios involving registrar/registry expiration or termination by ICANN. The Team also discussed the comment regarding past and present data but were uncomfortable applying this change due to the possible implications of data retention periods, et. al., of this change.

Purpose 5

Initial Report Language:

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

Proposed Updated Language:

- 1) 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;
- 2) Handle compliance complaints initiated by ICANN, or third parties consistent with the terms of the registry agreement and the registrar accreditation agreements.

Rationale:

Having taken careful note of all public comments received on this recommendation, Small Team B is proposing modifying the language to ensure specificity about the scope as well as splitting up the purpose in two parts to avoid intertwining two different aspects of Compliance's work.

Purpose 6

Initial Report Language:

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

Proposed Updated Language:

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, [but including where such policies take into account use of the domain names]), namely, the UDRP, URS, PDDRP, RRDRP, [and the TDRP.]

Rationale:

Having taken careful note of all public comments received on this recommendation, Small Team A noted the parenthetical, if it is retained, should match the wording of the bylaws and if specific policies are included, the TDRP should be added as it also may require access to registration data. The team also considered the following questions:

There are then a number of independent changes that may be made:

1. Omit the parenthetical
2. Omit list of dispute processes
3. Omit the word "coordinate" (and associated punctuation)
4. Omit the word "facilitate" (and associated punctuation)

Not yet discussed in full is whether we need to address dispute resolution processes that are neither ICANN-policies not court-ordered (such as mediation in accordance with ICANN contracts or registration agreements).

Recommendation 11

Initial Report Language:

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”).

Proposed Updated Language:

The EPDP Team recommends that Registrars are required to retain the herein-specified data elements for ICANN related requirements for a period of one year following the life of registration. This minimum retention period is consistent the requirements of the TDRP.

Note, Contracted Parties may have needs or requirements for longer retention periods in line with local law or other requirements. This is not prohibited by this language. Similarly, should local law prevent retention for the period of one year, there are waiver procedures in place that could address such situations.

Rationale:

Having taken careful note of all public comments received on this recommendation, Small Team B observed that the current language should be clarified that the proposed period is a minimum period, or more specifically a period for ICANN required retention and that CPs can adjust as needed beyond that period in line with local law / requirements. The Small Team B also agreed to remove the reference to 'statute of limitations'. The Small Team B recommends that the recommended data retention period is further considered by the full EPDP Team, although Contracted Parties noted that a justification for the retention period is required that is embedded in ICANN requirements (which is currently the TDRP).

To be further discussed by EPDP Team:

Further discussion needed on the recommended ICANN retention period.

Recommendation 13

Initial Report Language:

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.

Proposed Updated Language:

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.

Rationale:

Having taken careful note of all public comments received on this recommendation, Small Team B proposes to introduce more flexibility for Contracted Parties and ICANN Org to determine the most appropriate type of data processing agreement by not dictating a JCA but instead recommending that ICANN Org negotiates and enters into required data protection agreements such as....

Recommendation 15

Initial Report Language:

The EPDP 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).

Proposed Small Team Approach:

- a. Small Team A agreed to preserve the text of the recommendation, with the following exception to the language of the Temporary Specification. (Please see below.)
- b. Small Team A considered comments by URS and UDRP Providers (PCRT #9-10), and agree the proposed updates to the Temporary Specification detailed below should be considered by the EPDP Team. The update language appears in brackets for ease of reference.

Current Language (Temp Spec, Appendix D, Section 1.2)

"...In such an event, Complainant may file a "Doe" complaint and the Examiner shall provide the relevant contact details of the Registered Name Holder after being presented with a "Doe" complaint."

Proposed Language (Temp Spec, Appendix D, Section 1.2): "...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]."

Current Language (Temp Spec, Appendix E, Section 1.2)

"...In such an event, Complainant may file a "Doe" complaint and the Provider shall provide the relevant contact details of the Registered Name Holder after being presented with a "Doe" complaint."

Proposed Language (Temp Spec, Appendix E, Section 1.2): "...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]."

- c. Regarding comments about access to registration data for the purpose of assessing the merits of a UDRP Complaint (3, 5, 8, 11 of PCRT): Small Team A proposes to preserve these comments for the Access discussion in Phase 2 - at which point the EPDP Team can decide if the concerns are appropriately within scope, and if so, how to address the concerns.

Rationale:

- a. Small Team A noted deference should be paid to concerns provided by the UDRP and URS Providers as these entities process these complaints and may be better situated to note process-based issues. Accordingly, Small Team A notes the above-referenced edits should be considered by the full EPDP Team.
- b. Small team noted the comments regarding pre-UDRP Complaint access to registration data should be preserved for the access discussion as these comments relate specifically to access.

Recommendation 16

Initial Report Language:

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.

Proposed Updated Language:

No changes recommended – retain recommendation as is.

Rationale:

Having taken careful note of all public comments received on this recommendation, Small Team B took note of the withdrawal of the IPC/BC proposal for an additional recommendation in relation to this topic. As such, no further changes were deemed necessary.

Recommendation 17

Initial Report Language:

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.

Proposed Updated Language:

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.

Note: this language will be removed as a policy recommendation but included in the body of the Final Report under recommendations related to the URS/UDRP.

Rationale:

Having taken careful note of all public comments received on this recommendation, Small Team B proposes to remove Recommendation 17 as an official recommendation, as this recommendation appears to be an action item instead of a policy recommendation. Instead, the Small Team proposes to preserve the language within the body of the EPDP Team's Final Report and ensure the request is revisited during Phase 2 of the EPDP Team's work.

Recommendation 18

Initial Report Language:

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.

Proposed Updated Language:

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.

Rationale:

Having taken careful note of all public comments received on this recommendation, the Small Team proposes to remove the last clause from Rec. 18, noting it is out of scope for the EPDP Team.

Recommendation 19

Initial Report Language:

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.

Proposed Updated Language:

No changes recommended – retain recommendation as is.

Rationale:

Having taken careful note of all public comments received on this recommendation, Small Team B observed that the concern expressed is already being addressed by the Tech Ops group (see <https://bestpractice.domains/> and <https://docs.google.com/document/d/1MfbvbhXnT1aA4iQfxcVoNyLKJb3trMAwJdBKK2reyfs/edit>) and as such does not require further consideration by the EPDP Team at this stage.

Recommendation 20

Initial Report Language:

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.

Proposed Updated Language:

No changes recommended – retain recommendation as is.

Rationale:

Having taken careful note of all public comments received on this recommendation, Small Team B observed that the comments point to specific issues that should be addressed in the transfer review that has been recently kicked off (see <https://www.icann.org/public-comments/irtp-status-2018-11-14-en>).

Recommendation 21

Initial Report Language:

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.

Proposed Updated Language:

No changes recommended – retain recommendation as is.

Rationale:

Having taken careful note of all public comments received on this recommendation, Small Team B observed that the concern is mooted by the words "with the non-contracted Party entities involved in registration data processing" in the recommendation, which does not include the data subject (registrants).