**RECOMMENDATION 5**

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 <See Initial Report>.

***Disclaimer:*** *This overview has been developed to facilitate the EPDP Team’s consideration of the concerns expressed and possible updates to the recommendations. However, this does not replace the EPDP Team’s obligation to review all input received in full and to indicate if any concerns in this overview have inadvertently been mischaracterized.*

**Noted Concerns**

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| **Concern** | **Corresponding PCRT Comment #** | **Further Discussion Required?** |
| All data should be transferred to the registry in compliance with ICANN consensus policy on transitioning data from thin to thick for the remaining thin registries, including for the .com and .net. top level domains. The GDPR should not impact the remaining transition from thin to thick and transferring data from the registrar to the registry can be readily completed in a manner that is compliant with the GDPR.  [Sometimes in the course of an investigation it is more effective, or even required, to work with a registry than the registrar. For example, registrars manage only subsets under a given extension. If the legitimate purpose involves large numbers of domains, then it is more logical to work with a Thick registry. In another example, a registrar may be nonresponsive to lawful requests from a third party. In those cases, it is better if the registry holds a copy of the data.] | 3, 4  (Coalition for Online Accountability, BC, MarkMonitor, Microsoft | Yes/No |
| ALL data elements are to automatically transferred or better REPLICATED for the Registry. The Registry is to be deemed the ultimate custodian and broadly accountable for any data collected by the Registrar / Reseller by a system of Data Control agreements initiated by the Registry, binding on the Registrar and through the Registrar on the Reseller. | 6, Internet Society India Chennai | Yes/No |
| Transfer of these data elements is appropriate and legal under GDPR | 7, Internet Governance Project | Yes/No |
| Once registration records have been appropriately redacted, then the transmission of the redacted data elements to the registry may be appropriate and legal under the GDPR.  However, we note that the registries of ICANN are expressly not required to be in the member states of the European Union or in territories declared “adequate” by the relevant authorities. We have seen many new gTLD registries incorporated in countries which do not have comprehensive data protection laws (and do have strong laws requiring the sharing of data with law enforcement), including the United States. (Please see comment.)  [No personal or sensitive data elements should be transmitted from registrar to registry.] | 8, 13 (NCSG, Domain Name Rights Coalition) | Yes/No |
| The transfer of data from registrar to registry can only take place based on different purposes and different legal grounds. Where the processing is based on Art. 6 I b GDPR to perform the contract, it can unconditionally be transferred. Where the processing takes place based on Art. 6 I f GDPR, it can only take place if the registry actually asserts to have a legitimate interest in such processing. Absent the assertion of such interest, no data shall be transferred based on Art. 6 I f GDPR. | 9 (Association of Internet Industry, ISPCP) | Yes/No |
| Domain Name, Updated Date, Creation Date, Registry Expiry Date, Registrar, Name Servers (plural for nameservers!)  To accommodate privacy concerns in a multinational contact, supportive of returning to the "Thin WHOIS" model, just like .com, so most of these fields are not necessary (just the obvious ones like nameservers, registrar are needed, as per the current output of Internic.net for WHOIS of .com domains). | 11, George Kirikos | Yes/No |
| Personal Data Transfer to a Registry - ICANN’s continuing requirement that registrars transmit all data collected to the relevant registry is counter to the GDPR’s principle of use of data only when a legitimate legal basis applies | 12, John Poole | Yes/No |
| None of the data elements which the registrar is required to collect should be transferred to the registry operator, with the exception of any elements required to fulfill the registry’s validation requirements. There’s no reason to transfer registration contact data to the registry, since the registrar holds the data and can identify who the RNH is. | 14, Tucows | Yes/No |
| None of the registrant data is required by the registry. The only exception being registries with very specific policies around who can register in their TLD. | 15, Blacknight | Yes/No |
| Registries have not demonstrated that they need full WHOIS data for the DNS to function. Furthermore, they have not provided the legal justification for their potential use of this data that is not already covered by other purposes. If and when these conditions are satisfied, we are not opposed to sharing this data with registries.  [Transfer of data from registrar to registry would also expose that data to access requirements that may be unlawful in the jurisdiction that the registrar is based.] | 16, 18 (GoDaddy, RrSG) | Yes/No |
| Only those elements where a valid purpose of Ry exists and a valid data controller-processor agreement is in place. For such transfers, Ry is sole controller, Rr is processor of transferred data. Data transfers should only occur for valid purposes, not on general principle. Any transfer must meet the requirements for international transfer of personal data applicable to either party | 17, Key-Systems | Yes/No |
| 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. | 19, RySG | Yes, No |