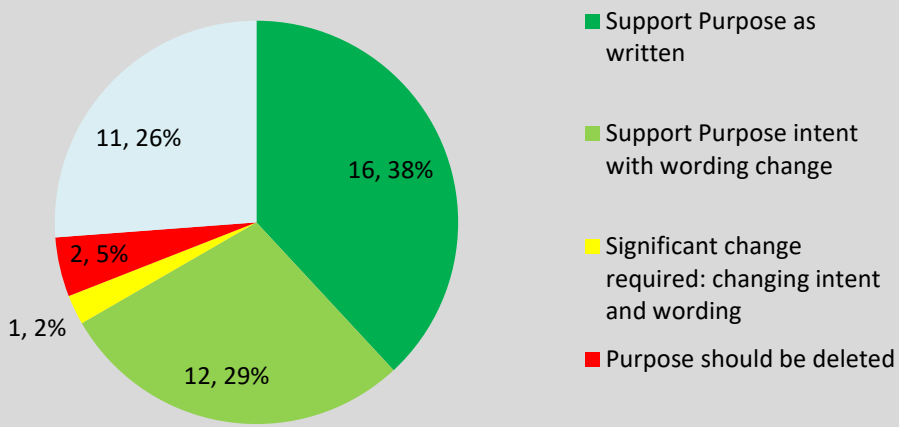
PURPOSE 5

#	Comment	Contributor	EPDP Response / Action Taken
Handle contractual compliance monitoring requests, audits, and complaints submitted by Registry Operators, Registrars, Registered Name Holders, and other Internet users			



Support Purpose as written

1.	No specific comments provided in support of this recommendation	• Brian King; IPC • Dean S. Marks; Coalition for Online Accountability • Sivasubramanian Muthusamy; Internet Society India Chennai • Tucows Domains Inc. • Sajda Ouachtouki; The Walt Disney Company • Tim Chen; DomainTools • Lori Schulman Senior Director, Internet Policy; International Trademark Association (INTA)	Support **EPDP Response:** The EPDP appreciates the support **Action Taken:** None [COMPLETED]

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		• Brian King; MarkMonitor, Inc., a Clarivate Analytics company • David Martel • Etienne Laurin • Ben Butler; SSAC • Evin Erdoğdu; ALAC	
2.	Authoritative data about the registrant, the registration, and its contact details can be required for assessing compliance with ICANN policies and for following up on complaints. In particular, ICANN org itself may need to process this data to monitor compliance with its policies. As long as processing of specific data that is fit-for-purpose is strictly restricted to parties who need it for this defined purpose, the NCSG can support Purpose 5.	Ayden Férdeline; NCSG	Support **EPDP Response:** The EPDP appreciates the support **Action Taken:** None [COMPLETED]
3.	The BC supports the purpose as written, on the assumption that ICANN is performing contractual compliance monitoring and audits under its remit. This clarifies ICANN Compliance's purpose for processing as detailed in the Summary of ICANN Org Contractual Compliance Data Processing Activities. (https://community.icann.org/display/EOTSFGRD/Input+from+ICANN+Org?preview=/90774122/97848455/Summary-Contractual-Compliance-Data-Processing-Activities.pdf)	Steve DelBianco; BC	Support **EPDP Response:** The EPDP appreciates the support **Action Taken:** None [COMPLETED]
4.	ICANN, registry operators, registrars, and registered domain name holders are subject to a variety of contractual and other obligations. See, e.g., Registrar Accreditation Agreement, sec. 3.7.7.9 (requiring the registered name holder to refrain from using the domain name in a manner that infringes the legal rights of any third party), https://www.icann.org/resources/pages/approved-with-specs-2013-09-17-en#raa; Registry Agreement, Specification 11, sec. 3(a) (providing that the registry operator will require registrars to prohibit registered name holders from engaging in illicit activity, such as "distributing malware, abusively operating botnets, phishing, piracy, trademark or copyright infringement, fraudulent or deceptive practices, [and] counterfeiting), https://newgtlds.icann.org/sites/default/files/agreements/agreement-approved-31jul17-en.html#specification11. Ensuring compliance with obligations such as these will require the collection and processing of WHOIS data, including providing access to third parties.	Neil Fried; The Motion Picture Association of America	Support **EPDP Response:** The EPDP appreciates the support **Action Taken:** None [COMPLETED]

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5.	Our support for the statement as written is based on the assumption that existing accuracy obligations will continue to be contractually maintained and effectively enforced by ICANN. Our cyber research and digital crimes investigations benefit when the registration data is accurate. Often registrants are unaware that they have been compromised and being able to contact them when anomalous behavior is detected can be helpful. This is one way that accurate registration data allows us to protect registrants, Internet users, and general consumers. Likewise, in cases where Microsoft trademarks and intellectual property have been abused, it is often the case that a letter or email from Microsoft informing a registrant of the problem is enough to resolve the issue. This desirable outcome benefits all parties and depends on accurate data. To the extent that the data is not accurate, we require the compliance functions to be in place and enforced by ICANN to hold registrars accountable to their accuracy obligations.	Jeremy Dallman, David Ladd – Microsoft Threat Intelligence Center; Amy Hogan-Burney, Richard Boscovich – Digital Crimes Unit; Makalika Naholowaa, Teresa Rodewald, Cam Gatta – Trademark; Mark Svancarek, Ben Wallace, Paul Mitchell – Internet Technology & Governance Policy; Cole Quinn – Domains and Registry; Joanne Charles – Privacy & Regulatory Affairs; Microsoft Corporation	Support **EPDP Response:** The EPDP appreciates the support **Action Taken:** None [COMPLETED]
Support Purpose intent with wording change			
6.	Have ICANN established the necessity to process personal data for contractual compliance matters? Can Contractual Compliance not accomplish what they require without access to personal data itself? To the extend ICANN establishes the necessity to process personal data for contractual compliance matters as intended, then we would agree it is acceptable only upon the adoption of appropriate limitations and provisions governing the processing of such data for this purpose by ICANN as a controller. While GoDaddy supports the purpose, namely the ability of ICANN to enforce compliance of its agreements (RAA, RA) with Contracted Parties, where applicable, it is acceptable only upon adoption of appropriate limitations and provisions governing the processing of such data for this purposed by ICANN as a controller. Programs that monitor or audit registration data must also be clearly defined before they can be included as a component of this purpose. Execution of a JCA (or other appropriate data processing addendum) between the responsible parties will be a necessary prerequisite to implementation of any obligations resulting from this ePDP.	Sara Bockey; GoDaddy	Concerns **EPDP Response:** **Action Taken:** [COMPLETED / NOT COMPLETED] – [Instruction of what was done.]
7.	ENABLE ICANN CONTRACTUAL COMPLIANCE THROUGH ACCESS TO INDIVIDUAL DATA SETS IF REQUIRED FOR SPECIFIC INVESTIGATIONS INTO CONTRACTED PARTY COMPLIANCE REGARDING ALLEGED VIOLATIONS OF THEIR CONTRACTUAL OR POLICY OBLIGATIONS INVOLVING DOMAIN NAME REGISTRATIONS INVOLVING SAID DATA SETS While there is purpose in ICANN being able to enforce compliance of its agreements with Contracted Parties, this purpose is contingent on the resolution of ICANN's status as a data controller or joint controller. Clearer definitions are needed re monitoring and auditing registration data before they can be included as components for this purpose. The use cases listed in the purpose are ill-defined and open to interpretation.	Volker Greimann; Key-Systems GmbH	Concerns **EPDP Response:** **Action Taken:** [COMPLETED / NOT COMPLETED] – [Instruction of what was done.]

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8.	HANDLE CONTRACTUAL COMPLIANCE MONITORING REQUESTS, AUDITS, AND COMPLAINTS SUBMITTED BY REGISTRY OPERATORS, REGISTRARS, REGISTERED NAME HOLDERS, AND OTHER INTERNET USERS AS DEPICTED IN THE ATTACHED RECORD OR PROCESSING ACTIVITIES. (The document would actually need to be added to the recommendation) There is no full understanding as to how ICANN exactly handles compliance matters. A record or processing activities to help understand what data is needed to perform the tasks, how it is handled and how long it is retained by ICANN has not been provided. Therefore, it is difficult to support a purpose relating to activities that are not fully transparent to the community. Whilst we support the essence of the purpose, our support is conditional to processing activities that are clearly and exhaustively depicted in a corresponding record. Also, it shall be limited to such processing of personal data that is needed, and not only desirable to have, to perform the tasks. The legal basis for this processing shall be clarified as being Art. 6 I f GDPR.	• Lars Steffen; eco – Association of the Internet Industry • Wolf-Ulrich Knoben; ISPCP Constituency	Concerns **EPDP Response:** **Action Taken:** [**COMPLETED / NOT COMPLETED**] – [Instruction of what was done.]
9.	While there is purpose in ICANN being able to enforce compliance of its agreements with Contracted Parties, this purpose is contingent on the resolution of ICANN's status as a data controller or joint controller. Clearer definitions are needed re monitoring and auditing registration data before they can be included as components for this purpose.	Zoe Bonython; RrSG	Concerns **EPDP Response:** **Action Taken:** [**COMPLETED / NOT COMPLETED**] – [Instruction of what was done.]
10.	[No wording change or rationale provided]	Domain.com, LLC & affiliates	Concerns **EPDP Response:** **Action Taken:** [**COMPLETED / NOT COMPLETED**] – [Instruction of what was done.]
11.	HANDLE CONTRACTUAL COMPLIANCE MONITORING REQUESTS, AUDITS, AND COMPLAINTS SUBMITTED BY REGISTRY OPERATORS, REGISTRARS, AND REGISTERED NAME HOLDERS. The current wording has an overbroad application. From a practical standpoint, it will be difficult for companies to execute as worded. From a legal and political perspective, stakeholders and ICANN should remain vigilant not to frame policies in a way that could further implicate the surrounding issues with GDPR compliance, other international activities and potential conflicts.	Monica Sanders; i2Coalition	Concerns **EPDP Response:** **Action Taken:** [**COMPLETED / NOT COMPLETED**] – [Instruction of what was done.]

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12.	There should be a comma added after the word "complaints", otherwise there's ambiguity! (i.e. the whole Oxford/serial comma debate --- probably want to double-check the document for other instances of this) Even better, perhaps delete " SUBMITTED BY REGISTRY OPERATORS, REGISTRARS, REGISTERED NAME HOLDERS, AND OTHER INTERNET USERS" -- since literally *everyone of significance* is an "internet user" these days, that essentially makes all that text unnecessary! I'd like to highlight the importance of "audits", as that requires maintenance of a historical record (i.e. audit trail)	George Kirikos; Leap of Faith Financial Services Inc.	Concerns **EPDP Response:** **Action Taken:** [**COMPLETED / NOT COMPLETED**] – [Instruction of what was done.]
13.	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." 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	Wim Degezelle ; RySG	Concerns **EPDP Response:** **Action Taken:** [**COMPLETED / NOT COMPLETED**] – [Instruction of what was done.]

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	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.		
14.	HANDLE CONTRACTUAL COMPLIANCE MONITORING REQUESTS, AUDITS, AND [ADD: Reasonable] COMPLAINTS SUBMITTED BY REGISTRY OPERATORS, REGISTRARS, REGISTERED NAME HOLDERS, AND OTHER INTERNET USERS Authoritative data about the registrant, the registration, and its contact details can be required for assessing compliance with ICANN policies and for following up on complaints. In particular, ICANN Org itself may need access to process this data to monitor compliance with its policies. As long as access to this processing of specific data that is fit-for-purpose is restricted to parties who need it for this defined purpose, we can support Purpose 5. We note below unreasonable complaints, and of course, for these, registrant data must not be shared.	A. Mark Massey; Domain Name Rights Coalition	Concerns **EPDP Response:** **Action Taken:** [**COMPLETED / NOT COMPLETED**] – [Instruction of what was done.]
15.	HANDLING CONTRACTUAL COMPLIANCE ENFORCEMENT ACTIVITIES AND AUDITS BY ICANN CONTRACTUAL COMPLIANCE DEPARTMENT, AS WELL AS ICANN'S ACTION ON REQUESTS AND COMPLAINTS SUBMITTED BYREGISTRY OPERATORS, REGISTRARS, REGISTERED NAME HOLDERS, AND OTHER INTERNET USERS Minor language tweaks for sake of clarity and being more explicit.	DR. JAIDEEP KUMAR MISHRA ; DIRECTOR MINISTRY OF ELECTRONICS AND INFORMATION TECHNOLOGY, GOVERNMENT OF INDIA	Concerns **EPDP Response:** **Action Taken:** [**COMPLETED / NOT COMPLETED**] – [Instruction of what was done.]
16.	Add "ICANN" to the list of parties who may submit compliance monitoring requests.	Greg Aaron; iThreat Cyber Group	Concerns **EPDP Response:** **Action Taken:** [**COMPLETED / NOT COMPLETED**] – [Instruction of what was done.]

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Significant change required: changing intent and wording			
17.	ICANN purpose for processing domain name registrants should be specific. This purpose is very broad and open to interpretation. Current compliance needs to process the data for compliance purposes should be identified and specifically mentioned. the whole purpose has to be re-written and justified by ICANN current compliance practices. More specifically, the purpose has to better use this document: https://mm.icann.org/pipermail/gnso-epdp-team/2018-November/000944.html in its wording. ICANN should also commit to developing and implementing policies that respect data minimization principles.	Farzaneh Badii; Internet Governance Project	Concerns Divergence Support New Idea **EPDP Response:** **Action Taken:** [**COMPLETED / NOT COMPLETED**] – [Instruction of what was done.]
Purpose should be deleted			
18.	Delete This is not needed--see my response to Purpose 1 above, the primary purpose is "AS SUBJECT TO REGISTRY AND REGISTRAR TERMS, CONDITIONS AND POLICIES, AND ICANN CONSENSUS POLICIES: TO RECORD AND MAINTAIN RECORDS OF THE NAMES AND CONTACT INFORMATION OF DOMAIN NAME REGISTRANTS" which encompasses "HANDLE CONTRACTUAL COMPLIANCE MONITORING REQUESTS, AUDITS, AND COMPLAINTS SUBMITTED BY REGISTRY OPERATORS, REGISTRARS, REGISTERED NAME HOLDERS, AND OTHER INTERNET USERS."	John Poole; Domain Name Registrant	Divergence **EPDP Response:** **Action Taken:** [**COMPLETED / NOT COMPLETED**] – [Instruction of what was done.]
19.	[No rationale provided]	Michele Neylon; Blacknight Internet Solutions Ltd	Divergence **EPDP Response:** **Action Taken:** [**COMPLETED / NOT COMPLETED**] – [Instruction of what was done.]

#	Comment	Contributor	EPDP Response / Action Taken
Not designated			
20.	No selection made and no additional comments submitted	• Steve Gobin; Corporate domain name management • Brian Beckham; Head, Internet Dispute Resolution Section, WIPO • Monique A. Goeschl; Verein für Anti-Piraterie der Film- und Videobranche (VAP) • Ashley Heineman; NTIA • Theo Geurts • Ivett Paulovics; MFSD Srl URS Provider • Greg Mounier on behalf of Europol AGIS; Europol Advisory Group on Internet Security • Ashley Roberts; Valideus • Renee Fossen; Forum - URS and UDRP Provider • Stephanie Perrin • Fabien Betremieux; GAC	**EPDP Response:** none **Action Taken:** none [COMPLETED]