

RECOMMENDATION 18

#	Comment	Contributor	EPDP Response / Action Taken																		
	<p>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.</p> <table border="1"> <caption>Response Distribution for Recommendation 18</caption> <thead> <tr> <th>Response Category</th> <th>Count</th> <th>Percentage</th> </tr> </thead> <tbody> <tr> <td>Support recommendation as written</td> <td>22</td> <td>52%</td> </tr> <tr> <td>Support intent of recommendation with edits</td> <td>4</td> <td>10%</td> </tr> <tr> <td>Intent and wording of this recommendation requires amendment</td> <td>1</td> <td>3%</td> </tr> <tr> <td>Delete recommendation</td> <td>1</td> <td>2%</td> </tr> <tr> <td>Not designated</td> <td>14</td> <td>33%</td> </tr> </tbody> </table>	Response Category	Count	Percentage	Support recommendation as written	22	52%	Support intent of recommendation with edits	4	10%	Intent and wording of this recommendation requires amendment	1	3%	Delete recommendation	1	2%	Not designated	14	33%		
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1.	No comments provided in support of this recommendation	<ul style="list-style-type: none"> • John Poole; Domain Name Registrant • Sara Bockey; GoDaddy • Volker Greimann; Key-Systems GmbH • Lars Steffen; eco – Association of the Internet Industry • Zoe Bonython; RrSG • Domain.com, LLC & affiliates • Wolf-Ulrich Knoben; ISPCP Constituency • Monica Sanders; i2Coalition • Wim Degezelle ; RySG • Brian King; IPC • Dean S. Marks; Coalition for Online Accountability • Sivasubramanian Muthusamy; Internet Society India Chennai • DR. JAIDEEP KUMAR MISHRA ; DIRECTOR MINISTRY OF ELECTRONICS AND INFORMATION TECHNOLOGY, GOVERNMENT OF INDIA • Greg Aaron; iThreat Cyber Group • Lori Schulman Senior Director, Internet Policy; International Trademark Association (INTA) • Brian King; MarkMonitor, Inc., a Clarivate Analytics company • David Martel • Etienne Laurin • Ben Butler; SSAC • Evin Erdoğan; ALAC 	<p>Support</p> <p>EPDP Response: The EPDP appreciates the support</p> <p>Action Taken: none</p> <p>[COMPLETED]</p>

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2.	<p>This change is probably necessary in order to reconcile EPDP recommendations with arrangements with existing UDRP providers.</p> <p>ICANN Org may also need to enter into data processing agreements with dispute resolution providers to limit the publication of personal and sensitive information about registrants in UDRP and URS decisions. Such data may include the names and contact information of registrants and their attorneys, and the names and contact data of complainant attorneys. Publication of identity, organization, and other data of the registrant and its attorneys -- including in dispute proceedings where the registrant won -- is a collection activity and publication of personal and sensitive data that may well be in violation of the GDPR. The UDRP and URS decision, and even the transfer of domain names, does not require such public disclosure as a necessary part of technical implementation. We further note that older UDRP and URS cases may need to be redacted for publication of personal and sensitive data of the registrant and his/her/its attorneys, email addresses, and other data.</p>	Ayden Férdeline; NCSG	<p>Support</p> <p>EPDP Response:</p> <p>Action Taken:</p> <p>[COMPLETED / NOT COMPLETED] – [Instruction of what was done.]</p>
Support intent of recommendation with edits			
3.	<p>Remove " as this will affect the ability to have publicly-available decisions."</p> <p>The DPAs need to be in place for legal reasons. The publication of the decisions is a potential benefit of this, but the two aren't linked.</p>	Michele Neylon; Blacknight Internet Solutions Ltd	<p>Concerns</p> <p>EPDP Response:</p> <p>Action Taken:</p> <p>[COMPLETED / NOT COMPLETED] – [Instruction of what was done.]</p>
4.	<p>The EPDP Team recommends that ICANN Org enter into data processing agreements with all relevant service providers (such as the Trademark Clearinghouse provider), including dispute resolution providers. Within such agreements, the data retention period should be specifically addressed, as this will affect the ability to make decisions publicly available.</p> <p>The BC believes agreements should so exist with all relevant service providers (such as the Trademark Clearinghouse provider), and not only the dispute resolution providers.</p>	Steve DelBianco; BC	<p>Concerns</p> <p>EPDP Response:</p> <p>Action Taken:</p> <p>[COMPLETED / NOT COMPLETED] – [Instruction of what was done.]</p>

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5.	The EPDP Team recommends that ICANN Org enter into data processing agreements with all relevant service providers (such as the Trademark Clearinghouse provider), including dispute resolution providers. Within such agreements, the data retention period should be specifically addressed, as this will affect the ability to make decisions publicly available.	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	<p>Concerns</p> <p>EPDP Response:</p> <p>Action Taken:</p> <p>[COMPLETED / NOT COMPLETED] – [Instruction of what was done.]</p>
6.	All decisions must include party names and must be publicly-available to maintain consistency and deter bad actors.	Renee Fossen; Forum - URS and UDRP Provider	<p>Concerns</p> <p>EPDP Response:</p> <p>Action Taken:</p> <p>[COMPLETED / NOT COMPLETED] – [Instruction of what was done.]</p>
Intent and wording of this recommendation requires amendment			

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7.	<p>The EPDP Team recommends that ICANN Org OR each Contracted Party 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.</p> <p>Dispute resolution vendors must have data processing agreements (DPAs) in place with any party with whom they propose to share data. This MUST include contracted parties. This MAY include ICANN but only in the event that ICANN accepts full responsibility as sole data controller. If ICANN does not, there is no reason for ICANN to have access to the data held by a dispute resolution provider, so no DPA is necessary.</p> <p>Agreements should exist between all relevant service providers, not just dispute resolution providers.</p> <p>It is important that UDRP/URS and other DRP decisions remain publicly available and transparent to the greatest extent possible, including the name of the parties. Knowing the name of the parties is important in later cases, especially respondent information, given that losing prior DRPs is a potential indicator of bad faith in other cases. In this context, the legitimate interest in transparency of these disputes must outweigh the privacy interest of the parties, just as is the default rule in a litigation context (except in very limited cases where party identities are redacted for special sensitivities). Note: the retention period must be appropriate in this context and may be longer than the retention period for other purposes, to ensure continued transparency of determinations in the URS and UDRP, both in published determinations and in the context of dispute resolution providers' internal databases.</p>	Tucows Domains Inc.	<p>Concerns</p> <p>EPDP Response:</p> <p>Action Taken:</p> <p>[COMPLETED / NOT COMPLETED] – [Instruction of what was done.]</p>
Delete recommendation			

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8.	<p>There should be no policy change for publicly-available decisions.</p> <p>There is an important public interest in having publicly-available decisions, as per the ""Open Court Principle"", see: https://en.wikipedia.org/wiki/Open_court_principle or ""open justice"" in the USA. https://en.wikipedia.org/wiki/Open_justice Often there are questionable decisions, and openness is an important accountability mechanism. Freedom of expression and freedom of the press would be hampered by a change that makes decisions private.</p> <p>The UDRP or URS should be eliminated entirely, if they are to only have private decisions, and instead parties should use the courts. Or, make the UDRP/URS be ""opt-in"" and non-mandatory for the registrant, as an alternative.</p>	George Kirikos; Leap of Faith Financial Services Inc.	<p>Divergence</p> <p>EPDP Response:</p> <p>Action Taken:</p> <p>[COMPLETED / NOT COMPLETED] – [Instruction of what was done.]</p>
Not designated			
9.	No selection made and no additional comments submitted	<ul style="list-style-type: none"> • A. Mark Massey; Domain Name Rights Coalition • Steve Gobin; Corporate domain name management • Sajda Ouachtouki; The Walt Disney Company • Tim Chen; DomainTools • Greg Aaron; iThreat Cyber Group • Neil Fried; The Motion Picture Association of America • Monique A. Goeschl; Verein für Anti-Piraterie der Film- und Videobranche (VAP) • Ashley Heineman; NTIA • Ivett Paulovics; MFSD Srl URS Provider • Greg Mounier on behalf of Europol AGIS; Europol Advisory Group on Internet Security • Ashley Roberts; Valideus • Farzaneh Badii; Internet Governance Project • Stephanie Perrin • Fabien Betremieux; GAC 	<p>EPDP Response: none</p> <p>Action Taken: none</p> <p>[COMPLETED]</p>
Are there any changes that the EPDP Team should consider in relation to the URS and UDRP that have not already been identified?			

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10	We encourage the EPDP Team to explore whether policymaking is appropriate to clarify that disclosure of non-public WHOIS data can be made prior to the administrative proceeding, and to explore what controls are needed to prevent abuse of such a system.	<ul style="list-style-type: none"> Brian King, IPC Brian King, MarkMonitor 	<p>Concerns</p> <p>EPDP Response:</p> <p>Action Taken:</p> <p>[COMPLETED / NOT COMPLETED] – [Instruction of what was done.]</p>
11	COA encourages the EPDP Team to explore whether disclosure of non-public WHOIS data can be made in the period between an assertion of violation of trademark rights and a proceeding under the URS or the UDRP in order to make an early determination of whether or not the party is actually an unauthorized third party making unauthorized use of the trademark in the relevant domain name from the perspective of the potential complainant.	Dean S. Marks; Coalition for Online Accountability	<p>Concerns</p> <p>EPDP Response:</p> <p>Action Taken:</p> <p>[COMPLETED / NOT COMPLETED] – [Instruction of what was done.]</p>
12	While it may be a procedural matter that does not rise to the level of policymaking, the UDRP Section 4.a. distinguishes between an assertion that the three elements are met, and the subsequent administrative proceeding where the complainant must prove the elements. We encourage the EPDP Team to explore whether policymaking is the appropriate avenue to clarify that disclosure of non-public WHOIS data can be made in the period between assertion and the proceeding, and to explore controls that could be included in the policy to prevent abuse of such a system.	<ul style="list-style-type: none"> Lori Schulman Senior Director, Internet Policy; International Trademark Association (INTA) 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 	<p>Concerns</p> <p>EPDP Response:</p> <p>Action Taken:</p> <p>[COMPLETED / NOT COMPLETED] – [Instruction of what was done.]</p>

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13	<p>The BC points out that the UDRP Section 4.a distinguishes between an assertion that the three elements are met, and the administrative proceeding where the complainant must prove the asserted elements. The assertion required under UDRP Section 4.a is:</p> <p>(i) your domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and</p> <p>(ii) you have no rights or legitimate interests in respect of the domain name; and</p> <p>(iii) your domain name has been registered and is being used in bad faith.</p> <p>We encourage the team to consider policymaking to clarify that disclosure of non-public WHOIS data can be made in the period between assertion and the administrative proceeding, and to explore controls that could be included in the policy to prevent abuse of such an investigative tool.</p>	Steve DelBianco; BC	<p>Concerns</p> <p>EPDP Response:</p> <p>Action Taken:</p> <p>[COMPLETED / NOT COMPLETED] – [Instruction of what was done.]</p>
14	<p>We have heard proposals within the EPDP to allow disclosure of private data to 3rd parties who are “considering” filing a UDRP/URS. This is not sufficient justification for disclosure and would create a significant legal risk for registrars that share this data. Private data associate with a domain name should be disclosed only to the UDRP/URS provider, and only in response to an actual (not potential) filing.</p>	Sara Bockey, GoDaddy Zoe Bonython, RrSG	<p>Concerns</p> <p>EPDP Response:</p> <p>Action Taken:</p> <p>[COMPLETED / NOT COMPLETED] – [Instruction of what was done.]</p>
15	<p>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.</p>	Wim Degezelle; RySG	<p>Concerns</p> <p>EPDP Response:</p> <p>Action Taken:</p> <p>[COMPLETED / NOT COMPLETED] – [Instruction of what was done.]</p>