

RECOMMENDATION 5 – Transfer from Rr to Ry

#	Comment	Contributor	EPDP Response / Action Taken												
	<p>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.</p> <p>Do you agree that all these data elements should be transferred from the registrar to the registry?</p> <table border="1"><caption>Survey Results for Recommendation 5</caption><thead><tr><th>Response</th><th>Count</th><th>Percentage</th></tr></thead><tbody><tr><td>Yes</td><td>18</td><td>43%</td></tr><tr><td>No</td><td>10</td><td>24%</td></tr><tr><td>Not designated</td><td>14</td><td>33%</td></tr></tbody></table>	Response	Count	Percentage	Yes	18	43%	No	10	24%	Not designated	14	33%		
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1.	No rationale submitted	<ul style="list-style-type: none"> • Evin Erdoğan; ALAC • Tim Chen; DomainTools • DR. JAIDEEP KUMAR MISHRA ; DIRECTOR MINISTRY OF ELECTRONICS AND INFORMATION TECHNOLOGY, GOVERNMENT OF INDIA • Monica Sanders; i2Coalition • David Martel • Etienne Laurin • Steve Gobin; Corporate domain name management • Ben Butler; SSAC 	<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>Contractual compliance is a critical and necessary function of ICANN, and part of its obligations to ensure that registrars/registries comply with their commitments in their contracts with ICANN. As such, the proper lawful basis for contractual compliance should be Art. 6(1)(b), and ICANN should receive all information it deems reasonably necessary to satisfy its compliance function.</p> <p>This means that Annex D, Workbook 5, to the extent incorporated by reference into the recommendation, should be modified to ensure the best legal basis is used (i.e. Art. 6(1)(b)) or it should be revised to state that the lawful basis includes both Art. 6(1)(b) and Art. 6(1)(f). ICANN shouldn't be subject to the risk that a rogue registrar decides to not provide personal information about a registrant to ICANN for compliance purposes under Art. 6(1)(f) because the registrar claims that the interests of the registrant outweigh the interests of ICANN just so that registrar can avoid a compliance audit.</p> <p>In addition, Workbook 5, again to the extent incorporated by reference into the recommendation, should be modified to clarify that ICANN should receive all information that it deems reasonably necessary for compliance, not just the "minimum", to ensure that ICANN can satisfy this important function.</p> <p>This is particularly important for contractual compliance complaints, such as false whois concerns. The only way ICANN can investigate these complaints is to receive or have access to all of the relevant registrant information so that it can check for compliance. We disagree with the comment in Workbook 5 that suggests that transmission of registration data is not technically necessary to perform the registration contract (which we assume means to perform a compliance audit or compliance check). We believe that ICANN should receive or have as much access to the data as it deems necessary for the compliance function, and that it should not be unduly limited in a manner that makes it difficult or overly burdensome for ICANN to perform this function.</p>	Brian King; IPC	<p>Support</p> <p>EPDP Response:</p> <p>Action Taken:</p> <p>[COMPLETED / NOT COMPLETED] – [Instruction of what was done.]</p>
3.	<p>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.</p>	Dean S. Marks; Coalition for Online Accountability	<p>Support</p> <p>EPDP Response:</p> <p>Action Taken:</p> <p>[COMPLETED / NOT COMPLETED] – [Instruction of what was done.]</p>

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4.	All data should be transferred to the registry, including data for the .com,.net and .jobs TLDs, the only remaining “thin” registries. Thick Whois Policy development concluded, several years ago, that we should transition data from thin to thick for the remaining thin registries. GDPR should not affect the agreed upon policy. Data transfer from registrar to registry can be completed in a manner that is compliant with GDPR.	<ul style="list-style-type: none"> Steve DelBianco; BC Brian King; MarkMonitor, Inc., a Clarivate Analytics company 	<p>Support</p> <p>EPDP Response:</p> <p>Action Taken:</p> <p>[COMPLETED / NOT COMPLETED] – [Instruction of what was done.]</p>
5.	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.	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>Support</p> <p>EPDP Response:</p> <p>Action Taken:</p> <p>[COMPLETED / NOT COMPLETED] – [Instruction of what was done.]</p>
6.	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. The method of Registrant Data collection could also change. As in credit card transactions, where the card holder submits card information directly to the card company even though the form for card information is in the merchant's website, Domain Name registrations could have system of gathering Registrant Data by a similar Registry's form directly connected to the Registry Database, from where the essential data elements necessary for the Registrar / Reseller's future commercial correspondence be transferred back to the Registrar / Reseller.	Sivasubramanian Muthusamy; Internet Society India Chennai	<p>Support</p> <p>EPDP Response:</p> <p>Action Taken:</p> <p>[COMPLETED / NOT COMPLETED] – [Instruction of what was done.]</p>

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7.	Transfer of these data elements is appropriate and legal under GDPR	Farzaneh Badii; Internet Governance Project	<p>Support</p> <p>EPDP Response:</p> <p>Action Taken:</p> <p>[COMPLETED / NOT COMPLETED] – [Instruction of what was done.]</p>
8.	<p>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.</p> <p>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.</p> <p>We note that the use of the data of a domain name registration for the prosecution of content, including for moral, ethnic, religious, and especially gender and sexual orientation speech, is growing. The GDPR does not allow us to collect and transmit data elements that will endanger data subjects in jurisdictions to which their personal data and sensitive data could be weaponized against them.</p> <p>Such power over registrant freedoms cannot be delegated to ICANN or ICANN-accredited registries who are not bound by the GDPR, and cannot (even by contract) waive their local obligations to respond to law enforcement demands. Accordingly, the GDPR prohibits the processing of this registrant data -- and similarly, transmission of this registrant data to registries who cannot possibly comply with the GDPR requirements.</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>
9.	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.	<ul style="list-style-type: none"> Lars Steffen; eco – Association of the Internet Industry Wolf-Ulrich Knoben; ISPCP Constituency 	<p>Support</p> <p>EPDP Response:</p> <p>Action Taken:</p> <p>[COMPLETED / NOT COMPLETED] – [Instruction of what was done.]</p>
No			

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10.	No follow-on response or rationale provided.	Domain.com, LLC & affiliates	Divergence EPDP Response: The EPDP notes the “No” designation Action Taken: none [COMPLETED]
11.	Domain Name, Updated Date, Creation Date, Registry Expiry Date, Registrar, Name Servers (plural for nameservers!) To accommodate privacy concerns in a multinational contact, I'd be 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).	George Kirikos; Leap of Faith Financial Services Inc.	Divergence EPDP Response: Action Taken: [COMPLETED / NOT COMPLETED] – [Instruction of what was done.]
12.	None, except where the transfer is necessary and reasonable--see rationale below. Rationale: "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 " read more at https://www.epag.de/en/tucows-statement-on-icann-legal-action/	John Poole; Domain Name Registrant	Divergence EPDP Response: Action Taken: [COMPLETED / NOT COMPLETED] – [Instruction of what was done.]
13.	No personal or sensitive data elements should be transmitted from registrar to registry. No, these data elements should not be transferred from gTLD registrar to gTLD registry. The registries of ICANN are expressly not required to be in countries of the EU or countries declared “adequate” by the Data Protection Commissioners, and we have seen many new gTLD registries incorporated in countries which do not have comprehensive data protection laws (and do have strong laws requiring shared of data with law enforcement), including the US.	A. Mark Massey; Domain Name Rights Coalition	Divergence EPDP Response: Action Taken: [COMPLETED / NOT COMPLETED] – [Instruction of what was done.]

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14.	<p>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.</p> <p>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. The additional optional elements may be transferred in order to fulfill the registry's validation requirements in certain cases but need not be required per ICANN policy.</p>	Tucows Domains Inc.	<p>Divergence</p> <p>EPDP Response:</p> <p>Action Taken:</p> <p>[COMPLETED / NOT COMPLETED] – [Instruction of what was done.]</p>
15.	<p>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</p> <p>The .com registry (and others) work just fine without having any of the registrant data. All they need is the nameservers, registrar and other fundamental technical data. ICANN is meant to co-ordinate technical identifiers, not act as some goldmine for data collection and mining.</p>	Michele Neylon; Blacknight Internet Solutions Ltd	<p>Divergence</p> <p>EPDP Response:</p> <p>Action Taken:</p> <p>[COMPLETED / NOT COMPLETED] – [Instruction of what was done.]</p>
16.	<p>All contact records that are currently redacted under the Temp Spec.</p> <p>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.</p>	Sara Bockey; GoDaddy	<p>Divergence</p> <p>EPDP Response:</p> <p>Action Taken:</p> <p>[COMPLETED / NOT COMPLETED] – [Instruction of what was done.]</p>
17.	<p>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.</p> <p>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.</p>	Volker Greimann; Key-Systems GmbH	<p>Divergence</p> <p>EPDP Response:</p> <p>Action Taken:</p> <p>[COMPLETED / NOT COMPLETED] – [Instruction of what was done.]</p>

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18.	<p>Registries must provide legal justification/purpose for receiving personal data. Simply wanting the data is not sufficient. If the requirements are met, and there is a data protection addendum or other similar contractual protections in place, we would be happy to share the personal data. 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.</p>	Zoe Bonython; RrSG	<p>Divergence</p> <p>EPDP Response:</p> <p>Action Taken:</p> <p>[COMPLETED / NOT COMPLETED] – [Instruction of what was done.]</p>
19.	<p>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.</p> <p>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.</p>	Wim Degezelle ; RySG	<p>Divergence</p> <p>EPDP Response:</p> <p>Action Taken:</p> <p>[COMPLETED / NOT COMPLETED] – [Instruction of what was done.]</p>
Not designated			

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20.	No designation or rationale provided.	<ul style="list-style-type: none"> • Lori Schulman Senior Director, Internet Policy; International Trademark Association (INTA) • Ashley Heineman; NTIA • Neil Fried; The Motion Picture Association of America • Sajda Ouachtouki; The Walt Disney Company • Greg Mounier on behalf of Europol AGIS; Europol Advisory Group on Internet Security • Monique A. Goeschl; Verein für Anti-Piraterie der Film- und Videobranche (VAP) • Fabien Betremieux; GAC • Brian Beckham; Head, Internet Dispute Resolution Section at WIPO • Theo Geurts • Ivett Paulovics; MFSD Srl URS Provider • Ashley Roberts; Valideus • Renee Fossen; Forum - URS and UDRP Provider • Stephanie Perrin 	<p>EPDP Response: none</p> <p>Action Taken: none</p> <p>[COMPLETED]</p>

RECOMMENDATION 5 – Additional Comments

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21.	By returning to the "Thin WHOIS" model, this would permit registrars to comply with their national obligations, and reduce compliance issues for registries. A European registrant can pick a European registrar, for example. Registrars with clients from multiple countries can get a separate registrar accreditation located in Europe, to serve European customers, and not have to impose GDPR on North Americans (many of whom don't want it!). Registries don't really need this data, in most cases (as the success of .com has illustrated!). A subset might be needed by registries in a few special cases (e.g. for .bank, proof that one is a financial institution, etc.).	George Kirikos; Leap of Faith Financial Services Inc.	<p>New Idea</p> <p>EPDP Response:</p> <p>Action Taken:</p> <p>[COMPLETED / NOT COMPLETED] – [Instruction of what was done.]</p>
22.	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.	Wim Degezelle ; RySG	<p>New Idea</p> <p>EPDP Response:</p> <p>Action Taken:</p> <p>[COMPLETED / NOT COMPLETED] – [Instruction of what was done.]</p>
23.	All data should be transferred to the registry, including data for the .com,.net and .jobs TLDs, the only remaining "thin" registries. Thick Whois Policy development concluded, several years ago, that we should transition data from thin to thick for the remaining thin registries. GDPR should not affect the agreed upon policy. Data transfer from registrar to registry can be completed in a manner that is compliant with GDPR.	Brian King; IPC	<p>New Idea</p> <p>EPDP Response: refer to like comments above in the "yes/no" sections</p> <p>Action Taken: none</p> <p>[COMPLETED]</p>
24.	A Thick Registry is the ultimate authority and repository for storing Registrant data. So all WHOIS data fields mentioned here should be transferred from Registrar to Registry.	DR. JAIDEEP KUMAR MISHRA ; DIRECTOR MINISTRY OF ELECTRONICS AND INFORMATION TECHNOLOGY, GOVERNMENT OF INDIA	<p>New Idea</p> <p>EPDP Response:</p> <p>Action Taken:</p> <p>[COMPLETED / NOT COMPLETED] – [Instruction of what was done.]</p>

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25.	A full "Tech Contact" (object) should be offered to registrants to take advantage of, not the half-way "Tech Fields" concept.	Greg Aaron; iThreat Cyber Group	<p data-bbox="1630 140 1733 164">New Idea</p> <p data-bbox="1630 172 1809 196">EPDP Response:</p> <p data-bbox="1630 236 1783 260">Action Taken:</p> <p data-bbox="1630 300 2018 323">[COMPLETED / NOT COMPLETED] –</p> <p data-bbox="1630 331 1966 355">[Instruction of what was done.]</p>