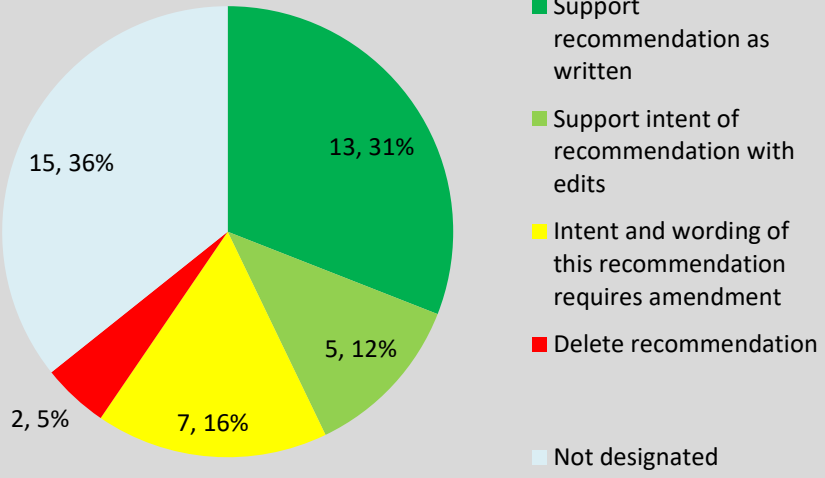


## RECOMMENDATION 6 – Transmission of Data to Escrow Providers

#	Comment	Contributor	EPDP Response / Action Taken																		
<ol style="list-style-type: none"> <li>1. The EPDP Team recommends that ICANN Org enter into legally-compliant data processing agreements with the data escrow providers.</li> <li>2. The EPDP Team recommends updates to the contractual requirements for registries and registrars to transfer data that they process to the data escrow provider to ensure consistency with the data elements workbooks that analyze the purpose to provide mechanisms for safeguarding Registered Name Holders' Registration Data.</li> <li>3. The data elements workbook that analyzes the purpose to provide mechanisms for safeguarding Registered Name Holders' Registration Data Registration Data contains the specifically-identified data elements the EPDP Team recommends be transferred by Registries and Registrars to data escrow providers (see Annex D, Workbook 4).</li> </ol>	 <table border="1" data-bbox="174 566 996 1045"> <caption>Response Distribution for Recommendation 6</caption> <thead> <tr> <th>Response Category</th> <th>Count</th> <th>Percentage</th> </tr> </thead> <tbody> <tr> <td>Support recommendation as written</td> <td>13</td> <td>31%</td> </tr> <tr> <td>Support intent of recommendation with edits</td> <td>5</td> <td>12%</td> </tr> <tr> <td>Intent and wording of this recommendation requires amendment</td> <td>7</td> <td>16%</td> </tr> <tr> <td>Delete recommendation</td> <td>2</td> <td>5%</td> </tr> <tr> <td>Not designated</td> <td>15</td> <td>36%</td> </tr> </tbody> </table>	Response Category	Count	Percentage	Support recommendation as written	13	31%	Support intent of recommendation with edits	5	12%	Intent and wording of this recommendation requires amendment	7	16%	Delete recommendation	2	5%	Not designated	15	36%		
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<b>Support recommendation as written</b>																					

#	Comment	Contributor	EPDP Response / Action Taken
1.	No comments provided in support of this recommendation	<ul style="list-style-type: none"> <li>○ Mark Massey; Domain Name Rights Coalition</li> <li>● Evin Erdoğan; ALAC</li> <li>● Brian King; IPC</li> <li>● Dean S. Marks; Coalition for Online Accountability</li> <li>● Lars Steffen; eco – Association of the Internet Industry</li> <li>● Wolf-Ulrich Knoben; ISPCP Constituency</li> <li>● Monica Sanders; i2Coalition</li> <li>● David Martel</li> <li>● Etienne Laurin</li> <li>● Greg Aaron; iThreat Cyber Group</li> </ul>	<p><b>Support</b></p> <p><b>EPDP Response:</b> The EPDP appreciates the support</p> <p><b>Action Taken:</b> none</p> <p><b>[COMPLETED]</b></p>
2.	Recommendation 6 is an appropriate measure to ensure that all data processing activities in which ICANN engages are compliant with data protection law. Registrars and registries must be given the opportunity to transfer to data escrow providers in countries covered by or deemed “adequate” under GDPR.	Ayden Férdeline; NCSG	<p><b>Support</b></p> <p><b>EPDP Response:</b></p> <p><b>Action Taken:</b></p> <p><b>[COMPLETED / NOT COMPLETED]</b> – [Instruction of what was done.]</p>
3.	In the interest of RNH protection, all data collected should be transferred to the data escrow provider.	Brian King; MarkMonitor, Inc., a Clarivate Analytics company	<p><b>Support</b></p> <p><b>EPDP Response:</b></p> <p><b>Action Taken:</b></p> <p><b>[COMPLETED / NOT COMPLETED]</b> – [Instruction of what was done.]</p>

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4.	<p>Recommendation 6 is an appropriate measure to ensure that all data processing activities in which ICANN engages are compliant with data protection law</p>	Farzaneh Badii; Internet Governance Project	<p><b>Support</b></p> <p><b>EPDP Response:</b></p> <p><b>Action Taken:</b></p> <p><b>[COMPLETED / NOT COMPLETED]</b> – [Instruction of what was done.]</p>
<b>Support intent of recommendation with edits</b>			
5.	<p>As new fields are collected by registrars (as per responses to Recommendation #4 already provided), they too should be put into escrow, to protect the registrant's data in case of registrar failure, etc. (i.e. witness the Registerfly fiasco, in case folks have forgotten). ALL data should be escrowed, including historical data, for an audit trail (to ensure recovery from domain thefts, too).</p> <p>One word: Registerfly!</p>	George Kirikos; Leap of Faith Financial Services Inc.	<p><b>Concerns</b></p> <p><b>EPDP Response:</b></p> <p><b>Action Taken:</b></p> <p><b>[COMPLETED / NOT COMPLETED]</b> – [Instruction of what was done.]</p>
6.	<ol style="list-style-type: none"> <li>1. The EPDP Team recommends that ICANN Org enter into legally-compliant data processing agreements with the data escrow providers.</li> <li>2. The EPDP Team recommends updates to the contractual requirements for registries and registrars to transfer data that they process to the data escrow provider to ensure consistency with the data elements workbooks that analyze the purpose to provide mechanisms for safeguarding Registered Name Holders' Registration Data.</li> <li>3. The data elements transferred by Registries and Registrars to data escrow providers should include the minimal data set, and not the data elements we indicated should be redacted in question 42 above.</li> </ol> <p>No rationale provided.</p>	Tucows Domains Inc.	<p><b>Concerns</b></p> <p><b>EPDP Response:</b></p> <p><b>Action Taken:</b></p> <p><b>[COMPLETED / NOT COMPLETED]</b> – [Instruction of what was done.]</p>

#	Comment	Contributor	EPDP Response / Action Taken
7.	<p>The EPDP Team did not specifically discuss and analyze each of the individual data elements identified in Preliminary Recommendation 6. 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> <p>In conducting this analysis, the EPDP Team should bear in mind that no additional data elements should be required to be collected by the registrar or transferred from the registrar to the registry solely to achieve this purpose. Rather, the data elements required to be transferred to the data escrow agents should be derived ONLY from the set of data elements required to be collected by the registrar and transferred from the registrar to the registry in fulfillment of Purposes 1, 3, 6 or 7.</p> <p>Further, in the Final Report, the recommendation should not reference the workbook but should be worded as a standalone recommendation that describes what data elements Contracted Parties are required to transfer to the data escrow providers.</p> <p>While the RySG acknowledges that safeguarding the registration data may be a legitimate processing activity, it does not in and of itself justify the collection or transferring of any additional data elements that are not already collected and transferred for more primary purposes. It is critical for the data elements workbooks to reflect this and for the entire policy to be consistent.</p>	Wim Degezelle ; RySG	<p><b>Concerns</b></p> <p><b>EPDP Response:</b></p> <p><b>Action Taken:</b></p> <p><b>[COMPLETED / NOT COMPLETED]</b> –  [Instruction of what was done.]</p>

#	Comment	Contributor	EPDP Response / Action Taken
8.	<p>1. The EPDP Team recommends that ICANN Org enter into legally compliant data processing agreements with the data escrow providers.</p> <p>2. The EPDP Team recommends updates to the contractual requirements for registries and registrars to transfer data that they process to the data escrow provider to provide mechanisms for safeguarding Registered Name Holders' Registration Data.</p> <p>3. In addition to the data elements workbook that analyzes the purpose to provide mechanisms for safeguarding Registered Name Holders' Registration Data Registration Data contains the specifically –identified data elements the EPDP Team recommends be transferred by Registries and Registrars to data escrow providers and the administrative contact, technical contact and any specialized data required by the registry should also be collected by the Registrar and transmitted to escrow providers (see Annex D, Workbook 4).</p> <p>In the interest of registrant protection, all data collected should be transferred to the data escrow provider. Note that not all of the data collected is in the workbooks – some registries hold special data specific to a particular TLD.</p>	<p>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 &amp; Governance Policy; Cole Quinn – Domains and Registry; Joanne Charles – Privacy &amp; Regulatory Affairs; Microsoft Corporation</p>	<p><b>Concerns</b></p> <p><b>EPDP Response:</b></p> <p><b>Action Taken:</b></p> <p><b>[COMPLETED / NOT COMPLETED]</b> – [Instruction of what was done.]</p>
9.	<p>1 The EPDP Team recommends that ICANN Org enter into legally-enforceable data processing agreements with the data escrow providers, keeping in mind GDPR and other privacy regulations and regimes.</p> <p>3 The data elements workbook that analyzes the purpose to provide mechanisms for safeguarding Registered Name Holders' Registration Data contains the specifically-identified data elements the EPDP Team recommends be transferred by Registries and Registrars to data escrow providers (see Annex D, Workbook4).</p> <p>Minor language tweaks for sake of clarity and removing typo errors.</p>	<p>DR. JAIDEEP KUMAR MISHRA ; DIRECTOR MINISTRY OF ELECTRONICS AND INFORMATION TECHNOLOGY, GOVERNMENT OF INDIA</p>	<p><b>Concerns</b></p> <p><b>EPDP Response:</b></p> <p><b>Action Taken:</b></p> <p><b>[COMPLETED / NOT COMPLETED]</b> – [Instruction of what was done.]</p>
<b>Intent and wording of this recommendation requires amendment</b>			
10.	<p>The current wording does not reference the registry or registrar having a contractual relationship or data processing agreement with the escrow provider(s)</p> <p>It's illogical that there not be a relationship between the data processors</p>	<p>Michele Neylon; Blacknight Internet Solutions Ltd</p>	<p><b>Concerns</b></p> <p><b>EPDP Response:</b></p> <p><b>Action Taken:</b></p> <p><b>[COMPLETED / NOT COMPLETED]</b> – [Instruction of what was done.]</p>

#	Comment	Contributor	EPDP Response / Action Taken
11.	<p>No edit suggested.</p> <p>We support the concept of data escrow as a safeguard against registrar, technical or business failure. However, we must insure that the data submitted under this program is legally and technically (encryption) protected, and otherwise aligns to the limitations and considerations adopted for the legal and proper processing and protection of data.</p>	Sara Bockey; GoDaddy	<p><b>Concerns</b></p> <p><b>EPDP Response:</b></p> <p><b>Action Taken:</b></p> <p><b>[COMPLETED / NOT COMPLETED]</b> – [Instruction of what was done.]</p>
12.	<p>Recommended changes to the wording: The EPDP Team recommends that each Registry/Registrar enter into legally- compliant data processing agreements with the data escrow providers.</p> <p>The EPDP Team recommends that registries and registrars transfer the necessary personal data to the data escrow provider in order to safeguard the Registered Name Holder's Registration Data, to enable the further administration of a domain name. The data elements workbook sets out the data elements in Annex D, Workbook 4 and must be in line with the principle of data minimisation.</p> <p>The data elements which are not personal data are sufficient but the only personal data elements to be transferred should be those collected in line with data minimisation.</p>	<ul style="list-style-type: none"> <li>• Zoe Bonython; RrSG</li> <li>• Volker Greimann; Key-Systems GmbH</li> </ul>	<p><b>Concerns</b></p> <p><b>EPDP Response:</b></p> <p><b>Action Taken:</b></p> <p><b>[COMPLETED / NOT COMPLETED]</b> – [Instruction of what was done.]</p>
13.	No comment or rationale provided.	Domain.com, LLC & affiliates	<p><b>Concerns</b></p> <p><b>EPDP Response:</b> The EPDP considered the designation of “Intent and wording of this recommendation requires amendment”</p> <p><b>Action Taken:</b> none</p> <p><b>[COMPLETED]</b></p>

#	Comment	Contributor	EPDP Response / Action Taken
14.	<p>1. The EPDP Team recommends that ICANN Org enter into legally- compliant data processing agreements with the data escrow providers.</p> <p>2. The EPDP Team recommends updates to the contractual requirements for registries and registrars to transfer data that they process to the data escrow provider to provide mechanisms for safeguarding Registered Name Holders' Registration Data.</p> <p>3. The data elements workbook that analyzes the purpose to provide mechanisms for safeguarding Registered Name Holders' Registration Data Registration Data contains the specifically -identified data elements the EPDP Team recommends be transferred by Registries and Registrars to data escrow providers, along with the administrative contact, technical contact and any specialized data required by the registry and collected by the Registrar. (see Annex D, Workbook)</p> <p>The BC recommends transferring all registration data collected by Registries and Registrars to data escrow providers. This would include all administrative and technical fields provided by the registrant and any "special data" required by Registries.</p>	Steve DelBianco; BC	<p><b>Concerns</b></p> <p><b>EPDP Response:</b></p> <p><b>Action Taken:</b></p> <p><b>[COMPLETED / NOT COMPLETED]</b> – [Instruction of what was done.]</p>
15.	<p>No edit suggested.</p> <p>ICANN's idea of Data escrow arises from visualizing scenarios of Registries not having adequate storage redundancy or rare scenarios of Top Level Domain Names discontinuing operations so abruptly that they don't even reliably transfer data to the alternate Registry Service Provider mandated by the gTLD agreements. While there is some rationale for data escrow, the escrow stipulation amounts to data replication - This is yet another copy of the database. Whatever be the security standards, whatever be the safeguards, an additional copy of the database increases risk of privacy hazards. If this storage redundancy is indeed required, then ICANN could consider ways of building inhouse capabilities for usually locked redundant storage.</p>	Sivasubramanian Muthusamy; Internet Society India Chennai	<p><b>Concerns</b></p> <p><b>EPDP Response:</b></p> <p><b>Action Taken:</b></p> <p><b>[COMPLETED / NOT COMPLETED]</b> – [Instruction of what was done.]</p>
<b>Delete recommendation</b>			
16.	<p>I have no objection to registrars having data escrow providers, however not enough information has been provided.</p> <p>I have no objection to registrars having data escrow providers, however not enough information has been provided above or in Annex D, Workbook 4, to support Recommendation #6 or provide any revised wording here.</p>	John Poole; Domain Name Registrant	<p><b>Divergence</b></p> <p><b>EPDP Response:</b></p> <p><b>Action Taken:</b></p> <p><b>[COMPLETED / NOT COMPLETED]</b> – [Instruction of what was done.]</p>

#	Comment	Contributor	EPDP Response / Action Taken
17.	<p>I would simply delete this entirely.</p> <p>The EPDP already has agreed that all pre-Temp Spec registrant Whois data elements should continue to be collected. Escrow serves a purpose clearly in line with ICANN's Mission and also one in the best interest of the registrant. This data is not published so much like it can be collected, it can be stored securely. No changes are needed here.</p>	Tim Chen; DomainTools	<p><b>Divergence</b></p> <p><b>EPDP Response:</b></p> <p><b>Action Taken:</b></p> <p><b>[COMPLETED / NOT COMPLETED]</b> – [Instruction of what was done.]</p>
<b>Not designated</b>			



#	Comment	Contributor	EPDP Response / Action Taken
18.	No selection made and no additional comments submitted	<ul style="list-style-type: none"> <li>• Steve Gobin; Corporate domain name management</li> <li>• Ben Butler; SSAC</li> <li>• Lori Schulman Senior Director, Internet Policy; International Trademark Association (INTA)</li> <li>• Ashley Heineman; NTIA</li> <li>• Neil Fried; The Motion Picture Association of America</li> <li>• Sajda Ouachtouki; The Walt Disney Company</li> <li>• Greg Mounier on behalf of Europol AGIS; Europol Advisory Group on Internet Security</li> <li>• Monique A. Goeschl; Verein für Anti-Piraterie der Film- und Videobranche (VAP)</li> <li>• Fabien Betremieux; GAC</li> <li>• Brian Beckham; Head, Internet Dispute Resolution Section at WIPO</li> <li>• Theo Geurts</li> <li>• Ivett Paulovics; MFSD Srl URS Provider</li> <li>• Ashley Roberts; Valideus</li> <li>• Renee Fossen; Forum - URS and UDRP Provider</li> <li>• Stephanie Perrin</li> </ul>	<p><b>EPDP Response:</b> none</p> <p><b>Action Taken:</b> none</p> <p><b>[COMPLETED]</b></p>

## RECOMMENDATION 6 – Additional Comments

#	Comment	Contributor	EPDP Response / Action Taken
19.	<p>ICANN may require that Contracted Parties backup their data in a particular manner so that the databases can be reconstructed in the event of a business or technical failure. We note that the data processed for this purpose must be minimized and appropriate parties must have agreements in place with escrow providers in order to protect that data. Registrars should not be required to collect data specifically for the purpose of backing it up with a data escrow provider, but if the data is already collected it can be required to include it in the backup.</p> <p>It is important to note that ICANN (including, but not limited to, ICANN Org and ICANN Contractual Compliance) should not have access to the DEA deposits. ICANN may require backups to the DEA, but there is no legal basis for ICANN to access this information; in the event of a business or technical failure that requires that the database be reconstructed, the access should be given to the newly-assigned provider, not to ICANN. This would allow the new registrar to enter into and fulfil their contract with the registrant, while there remains no legal justification for the transfer of RNH data to other parties not included in the contract with the RNH (for example, ICANN).</p>	Tucows Domains Inc.	<p><b>New Idea</b></p> <p><b>EPDP Response:</b></p> <p><b>Action Taken:</b></p> <p><b>[COMPLETED / NOT COMPLETED]</b> – [Instruction of what was done.]</p>
20.	<p>The RySG understands that at least one data escrow provider submitted several months ago to ICANN for ICANN’s required approval a template data processing amendment to that provider’s Registry Operator escrow agreements. Such an amendment could fulfill part 2 of Recommendation 6 once ICANN approves it.</p>	Wim Degezelle ; RySG	<p><b>New Idea</b></p> <p><b>EPDP Response:</b></p> <p><b>Action Taken:</b></p> <p><b>[COMPLETED / NOT COMPLETED]</b> – [Instruction of what was done.]</p>