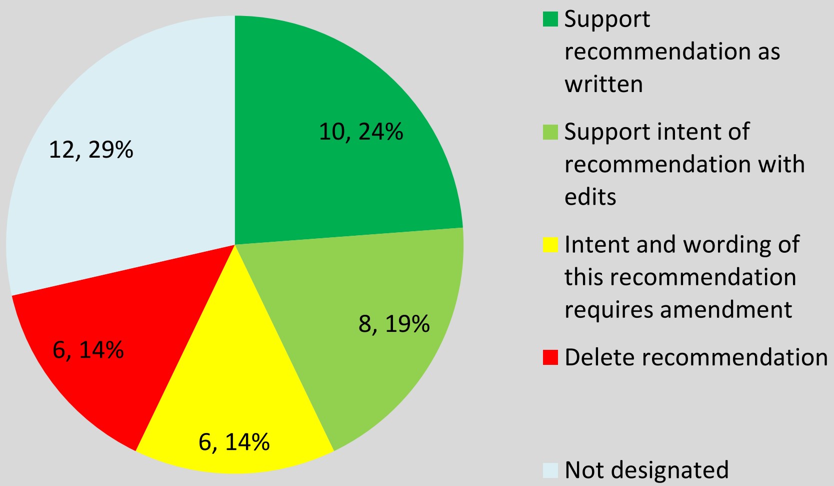
RECOMMENDATION 7 – Transmission of Data to ICANN Compliance

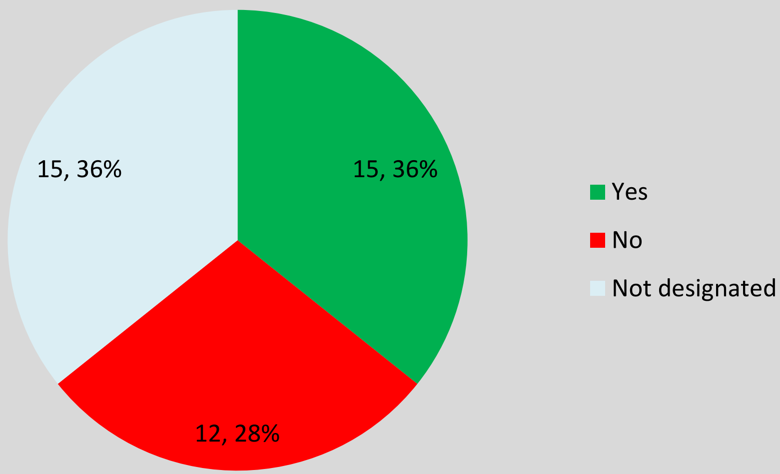
#	Comment	Contributor	EPDP Response / Action Taken

- The EPDP Team recommends that updates are made to the contractual requirements for registries and registrars to transfer to ICANN Compliance the domain name registration data that they process when required/requested, consistent with the data elements workbook that analyzes the purpose to handle contractual compliance monitoring requests, audits, and complaints submitted by Registry Operators, Registrars, Registered Name Holders, and other Internet users (see Annex D, Workbook 5).
- The data elements workbook that analyzes the purpose to handle contractual compliance monitoring requests, audits, and complaints submitted by Registry Operators, Registrars, Registered Name Holders, and other Internet users contains the specifically-identified data elements the EPDP Team recommends be transferred from registries and registrars to ICANN Compliance (see Annex D, Workbook 5).

Choose your level of support of Recommendation #7:



Do you agree that all of these data elements should be transferred from the registrar to ICANN?



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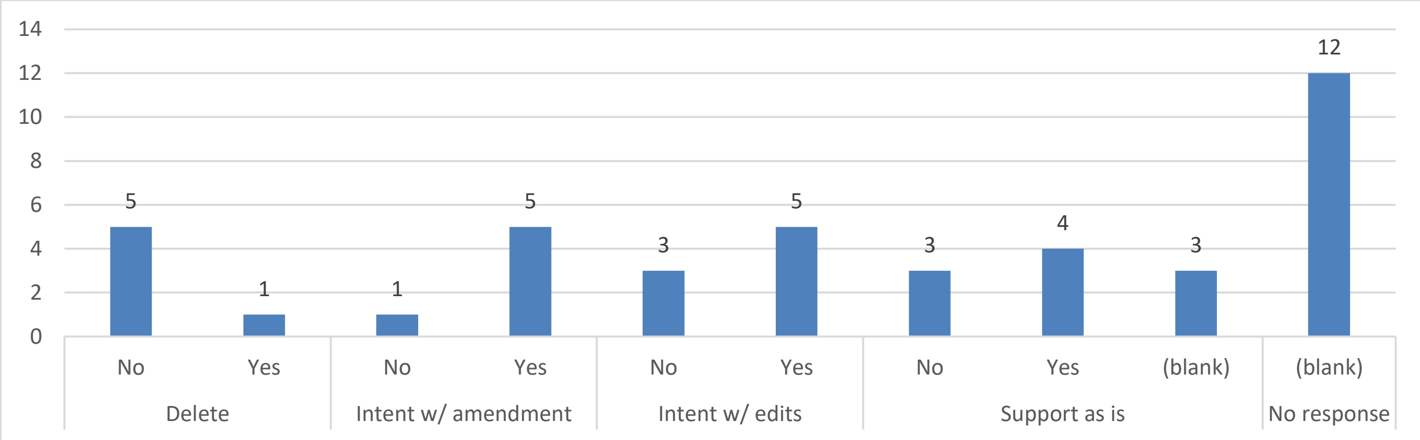
<tr><td colspan="4">
</td></tr>
<tr><td colspan="2">Support recommendation as written</td><td colspan="2">Yes to transfer to ICANN</td></tr>
<tr><td>1.</td><td>No comments provided in support of this recommendation</td><td>DR. JAIDEEP KUMAR MISHRA ; DIRECTOR MINISTRY OF ELECTRONICS AND INFORMATION TECHNOLOGY, GOVERNMENT OF INDIA
Monica Sanders; i2Coalition
Etienne Laurin
Neil Fried; The Motion Picture Association of America</td><td>Support
EPDP Response: The EPDP appreciates the support

Action Taken: none

[COMPLETED]</td></tr>
<tr><td>2.</td><td>The support is conditional to a record of processing activities that shall be provided by ICANN org and be exhaustive.</td><td>Wolf-Ulrich Knoben; ISPCP Constituency
Lars Steffen; eco – Association of the Internet Industry</td><td>Support
EPDP Response:

Action Taken:

[COMPLETED / NOT COMPLETED] – [Instruction of what was done.]</td></tr>
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#	Comment	Contributor	EPDP Response / Action Taken
3.	INTA supports compliance having all the data it needs to efficiently carry out its vital function to ensure that contractual obligations are being met, and issues are resolved as quickly as possible. This is particularly vital in the context of ICANN Compliance activities to support the combat of DNS abuse.	Lori Schulman Senior Director, Internet Policy; International Trademark Association (INTA)	Support **EPDP Response:** **Action Taken:** [**COMPLETED / NOT COMPLETED**] – [Instruction of what was done.]
Support recommendation as written		**No to transfer to ICANN**	
4.	See Below We answer 'No' here only because the NCSG believes that requests by ICANN Compliance should be limited to those elements required to accommodate issues they will deal with at that time. In principle, this could mean that all data elements are required, but not all elements will be needed for other purposes. We wish to underline the principle that compliance requests should not be open-ended fishing expeditions. We note that ICANN Compliance rules should be more subject to review and understanding by the community, and that there are concerns (and reports) that complaints are being used, in part, as harassment and fishing expeditions against registrants. Accordingly, transfer of data elements even to ICANN Compliance should be subject to special evaluation and review -- not automatically done regardless of purposes, scope and scale.	Ayden Férdeline; NCSG	Support **EPDP Response:** **Action Taken:** [**COMPLETED / NOT COMPLETED**] – [Instruction of what was done.]
5.	We answer No here only because we believe that requests by ICANN compliance should be limited to those elements required to satisfy whatever issues they are dealing with at the time. In principle, this could mean that all data elements are required, but it may not need all elements for other purposes. We wish to underline the principle that compliance requests should not be open-ended fishing expeditions.	Farzaneh Badii; Internet Governance Project	Support **EPDP Response:** **Action Taken:** [**COMPLETED / NOT COMPLETED**] – [Instruction of what was done.]
6.	Personal contact details should not be passed to icann	David Martel	Support **EPDP Response:** **Action Taken:** [**COMPLETED / NOT COMPLETED**] – [Instruction of what was done.]
Support intent of recommendation with edits		**Yes to transfer to ICANN**	

#	Comment	Contributor	EPDP Response / Action Taken
7.	No comments provided in support of this recommendation	• Dean S. Marks; Coalition for Online Accountability • Brian King; IPC • Ben Butler; SSAC	Support **EPDP Response:** The EPDP appreciates the support **Action Taken:** none [COMPLETED]
8.	The wording could be modified as below 1. The EPDP Team recommends that updates are made to the contractual requirements for registries and registrars to transfer to ICANN Compliance the domain name registration data that they process (replace "process" with "collect") - delete - "when required/requested" - delete , consistent with the data elements workbook that analyzes the purpose to handle contractual compliance monitoring requests, audits, and complaints submitted by Registry Operators, Registrars, Registered Name Holders, and other Internet users (see Annex D, Workbook 5). 2. The data elements workbook that analyzes the purpose to handle contractual compliance monitoring requests, audits, and complaints submitted by Registry Operators, Registrars, Registered Name Holders, and other Internet users contains the specifically-identified (replace "specifically-identified" with "all") data elements the EPDP Team recommends be transferred from registries and registrars to ICANN Compliance (see Annex D, Workbook 5)	Sivasubramanian Muthusamy; Internet Society India Chennai	Concerns **EPDP Response:** **Action Taken:** [COMPLETED / NOT COMPLETED] – [Instruction of what was done.]
9.	Ensure that as new fields are added (as Rec #4 fields are changed, due to public input), that these additional (sometimes option) fields are added into Rec #7.	George Kirikos; Leap of Faith Financial Services Inc.	Concerns **EPDP Response:** **Action Taken:** [COMPLETED / NOT COMPLETED] – [Instruction of what was done.]
Support intent of recommendation with edits	**No to transfer to ICANN**		
10.	Not all purposes proposed in Annex D are purposes for processing data and request for disclosure should be specific and proportionate to the issue being addressed. GoDaddy supports the purpose, namely the ability of ICANN to enforce compliance of its agreements (RAA, RA) with Contracted Parties, where applicable. However, this purpose is contingent on the resolution of ICANN's status as a data controller or joint controller. Programs that monitor or audit registration data must also be clearly defined before they can be included as a component of this purpose.	Sara Bockey; GoDaddy	Concerns **EPDP Response:** **Action Taken:** [COMPLETED / NOT COMPLETED] – [Instruction of what was done.]

#	Comment	Contributor	EPDP Response / Action Taken
11.	Transfer of the following data elements is not necessary to achieve the Purposes identified above: Registrant Street Registrant City Registrant State/Province Registrant Postal Code Registrant phone / phone ext Registrant fax / fax ext Tech Name Tech Phone Tech Email In addition, the remaining data elements (Registrant Name, Registrant Organization, Registrant Email, Registrant Country) should only be transferred to ICANN after ICANN has demonstrated a specific legitimate purpose to access those particular data elements. The data elements listed above are not necessary for ICANN Contractual Compliance to complete "monitoring requests, audits, and complaints submitted by registry operators, registrars, registered name holders, and other internet users" in the bulk of such situations. No data should be automatically transferred, either by or to ICANN but should only be transferred upon a showing of legitimate interest on a case-by-case basis. Our experience has been that ICANN Contractual Compliance does not ever require the above-listed data elements. We also note that, as to the remaining data elements, which are occasionally called for, they should never be presumptively required but each data element should be justified by ICANN Contractual Compliance if and when they believe the data element to be necessary for a specific matter on a case-by-case basis. Registrars should not be penalized by ICANN Contractual Compliance in the instance that they disagree with ICANN Contractual Compliance determination regarding legitimate interest as Registrars have been placed in the position of being the stewards of their registrants' personal data. Finally, the data elements listed above are not only not necessary for ICANN Contractual Compliance, they are not necessary for ICANN's purposes at all and should not be required to be collected by Registrars.	Tucows Domains Inc.	Concerns **EPDP Response:** **Action Taken:** [**COMPLETED / NOT COMPLETED**] – [Instruction of what was done.]

#	Comment	Contributor	EPDP Response / Action Taken
12.	The EPDP Team did not specifically discuss and analyze each of the individual data elements identified in Preliminary Recommendation 7. 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. 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. 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. While the RySG acknowledges that ICANN's compliance activities may be legitimate processing activities, 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.	Wim Degezelle ; RySG	Concerns **EPDP Response:** **Action Taken:** [COMPLETED / NOT COMPLETED] – [Instruction of what was done.]
Intent and wording of this recommendation requires amendment		**Yes to transfer to ICANN**	
13.	No comments provided in amendment of this recommendation	Evin Erdoğdu; ALAC	Support **EPDP Response:** The EPDP appreciates the support **Action Taken:** none [COMPLETED]
14.	The BC agrees that all the data elements listed in Workbook 5 should be transferred from the registrar/registry to ICANN. We further recommend that all registrant data collected by registrar/registry be transferred to ICANN If a registrar/registry collects registrant data it should be transferred to ICANN to properly enable Compliance and other critical functions.	Steve DelBianco; BC	Concerns **EPDP Response:** **Action Taken:** [COMPLETED / NOT COMPLETED] – [Instruction of what was done.]

#	Comment	Contributor	EPDP Response / Action Taken
15.	When a registrar/registry collects registrant data it should be transferred to ICANN. All the data elements listed in Workbook 5 should be transferred from the registrar/registry to ICANN, and any other applicable registrar/registry-specific registrant data collected by registrar/registry should be also transferred to ICANN. We notice that the registration data set frequently contains many inaccuracies. Although even the inaccurate data is of use in cybersecurity investigations, it is less useful for dispute resolution, and if the accuracy of the data can be improved by the ICANN compliance processes and policies, we support them.	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	Concerns **EPDP Response:** **Action Taken:** [COMPLETED / NOT COMPLETED] – [Instruction of what was done.]
16.	MarkMonitor agrees that all the data elements listed in Workbook 5 be transferred from the registrar/registry to ICANN, and we also recommend that all RNH data collected by registrar/registry be transferred to ICANN. If a registrar/registry collects registrant data it should be transferred to ICANN.	Brian King; MarkMonitor, Inc., a Clarivate Analytics company	Concerns **EPDP Response:** **Action Taken:** [COMPLETED / NOT COMPLETED] – [Instruction of what was done.]
17.	only those data elements needed on a case-by-case to a valid and non-frivolous and non-harassing complaint should be transferred from the registrar/y to ICANN Compliance. Requests by ICANN compliance must be limited to those elements required to accommodate satisfy issues at that time. In principle, this could mean that all data elements may be needed for one complaint, but not for another. We wish to underline the principle that compliance requests must not be open-ended fishing expeditions. We note that ICANN Compliance rules should be subject to more review and understanding by the community, and that there are concerns (and reports) that complaints are being used, in part, as harassment and fishing expeditions against registrants. Accordingly, transfer of data elements even to ICANN compliance should be subject to special evaluation and review -- not automatically done regardless of purposes, scope and scale.	Greg Aaron; iThreat Cyber Group	Concerns **EPDP Response:** **Action Taken:** [COMPLETED / NOT COMPLETED] – [Instruction of what was done.]
Intent and wording of this recommendation requires amendment		**No to transfer to ICANN**	

#	Comment	Contributor	EPDP Response / Action Taken
18.	only those data elements needed on a case-by-case to a valid and non-frivolous and non-harassing complaint should be transferred from the registrar/y to ICANN Compliance. Requests by ICANN compliance must be limited to those elements required to accommodate satisfy issues at that time. In principle, this could mean that all data elements may be needed for one complaint, but not for another. We wish to underline the principle that compliance requests must not be open-ended fishing expeditions. We note that ICANN Compliance rules should be subject to more review and understanding by the community, and that there are concerns (and reports) that complaints are being used, in part, as harassment and fishing expeditions against registrants. Accordingly, transfer of data elements even to ICANN compliance should be subject to special evaluation and review -- not automatically done regardless of purposes, scope and scale.	A. Mark Massey; Domain Name Rights Coalition	Concerns **EPDP Response:** **Action Taken:** [**COMPLETED / NOT COMPLETED**] – [Instruction of what was done.]
Delete recommendation		**Yes to transfer to ICANN**	
19.	ICANN itself is subject to GDPR, and its Compliance activities are worthy and in line with its Mission. No changes are needed here.	Tim Chen; DomainTools	Divergence **EPDP Response:** **Action Taken:** [**COMPLETED / NOT COMPLETED**] – [Instruction of what was done.]
Delete recommendation		**No to transfer to ICANN**	
20.	No comments provided in amendment of this recommendation	Domain.com, LLC & affiliates	Divergence **EPDP Response:** The EPDP appreciates the support **Action Taken:** None [**COMPLETED**]

#	Comment	Contributor	EPDP Response / Action Taken
21.	None of the data elements should be transferred from the registrar to ICANN. Same as the rationale I gave in answer to Recommendation #5 above: 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/ The registrar could just give ICANN access to the data when lawful and appropriate. Of all the parties mentioned (registrars, registries, ICANN), I trust my registrar the most to responsibly keep and process my registrant data, the monopoly registry operator less so, and least of all ICANN.	John Poole; Domain Name Registrant	Divergence **EPDP Response:** **Action Taken:** [**COMPLETED / NOT COMPLETED**] – [Instruction of what was done.]
22.	Any request for data from ICANN to a registrar should be narrow and specific. Each request should include a clear rationale for the requested data as well as clearly demarcated details on how ICANN handles that data. At present ICANN does not have DPAs with registrars and is also claiming that it somehow is exempt from meeting the thresholds that companies we deal with for far less sensitive data have to meet.	Michele Neylon; Blacknight Internet Solutions Ltd	Divergence **EPDP Response:** **Action Taken:** [**COMPLETED / NOT COMPLETED**] – [Instruction of what was done.]
23.	In the event ICANN require personal data, they must provide a legal justification and purpose, it must be proportionate and it will be done on a case by case basis. While ICANN compliance may require to check with registries or registrars in respect of a compliance issue for a domain name, there is no clarity on why ICANN require the personal data of a Registered Name Holder.	• Zoe Bonython; RrSG • Volker Greimann; Key-Systems GmbH	Divergence **EPDP Response:** **Action Taken:** [**COMPLETED / NOT COMPLETED**] – [Instruction of what was done.]
Not designated			

#	Comment	Contributor	EPDP Response / Action Taken
24.	No selection made and no additional comments submitted	• Greg Mounier on behalf of Europol AGIS; Europol Advisory Group on Internet Security • Brian Beckham; Head, Internet Dispute Resolution Section at WIPO • Fabien Betremieux; GAC • Steve Gobin; Corporate domain name management • Ashley Heineman; NTIA • Sajda Ouachtouki; The Walt Disney Company • Monique A. Goeschl; Verein für Anti-Piraterie der Film- und Videobranche (VAP) • Theo Geurts • Ivett Paulovics; MFSD Srl URS Provider • Ashley Roberts; Valideus • Renee Fossen; Forum - URS and UDRP Provider • Stephanie Perrin	**EPDP Response:** none **Action Taken:** none [COMPLETED]

RECOMMENDATION 11 – Additional Comments

#	Comment	Contributor	EPDP Response / Action Taken
25.	Registrars collect and process data from their clients in good faith and in line with the law. ICANN cannot expect us to ignore that and simply handover data without any clear rationale nor do they have any right to mine our clients' data or retain it or process it without appropriate safeguards.	Michele Neylon; Blacknight Internet Solutions Ltd	**EPDP Response:** **Action Taken:** [**COMPLETED / NOT COMPLETED**] – [Instruction of what was done.]
26.	It is unclear if the wording needs to be changed, but the ultimate result must be that Compliance has immediate access to registration data without having to make an explicit request and wait for reply. Having to formally request data and then restart the investigation when it arrives needlessly increases the complexity of the costs of Contractual Compliance.	Evin Erdoğdu; ALAC	**EPDP Response:** **Action Taken:** [**COMPLETED / NOT COMPLETED**] – [Instruction of what was done.]
27.	If ICANN provides a Data Processing Agreement or some appropriate assurances re how they handle, store, process, and delete data, and the data are truly a minimal set, ICANN might be able to request certain minimal data elements which are needed for the purposes listed (see pg 115 of current clean copy). At this time, however we have no assurance that ICANN will require a truly minimal set; hopefully this will be determined within the UAM work.	Tucows Domains Inc.	**EPDP Response:** **Action Taken:** [**COMPLETED / NOT COMPLETED**] – [Instruction of what was done.]
28.	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. 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). In addition, 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.	Dean S. Marks; Coalition for Online Accountability	**EPDP Response:** **Action Taken:** [**COMPLETED / NOT COMPLETED**] – [Instruction of what was done.]

#	Comment	Contributor	EPDP Response / Action Taken
29.	Please see response to question 64. We also note that our members have submitted several contractual compliance complaints to ICANN about registrars' failure to provide registrant information to them in accordance with the requirements of the temporary specification. Those complaints have been pending for over 5 months with no response from ICANN. This inability of ICANN to investigate and respond to contractual compliance complaints is very troubling and points to a potential breakdown in the ICANN model.	Brian King; IPC	**EPDP Response:** **Action Taken:** [**COMPLETED / NOT COMPLETED**] – [Instruction of what was done.]
30.	The RAA currently requires that several other types of data be collected, data that has never been displayed in RDDS. For clarity, the report should state that these RAA provisions are not affected and should remain in place. Most important is the identity of the "Account Holder", which the RAA defines as "the person or entity that is paying for the Registered Name or otherwise controls the management of the registered name, when that person or entity is not the Registered Name Holder.	Ben Butler; SSAC	**EPDP Response:** **Action Taken:** [**COMPLETED / NOT COMPLETED**] – [Instruction of what was done.]
31.	ICANN, registrars, registry operators, and registered domain name holders have long been subject to certain requirements. 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 those obligations will require collection and processing of data as part of the WHOIS system, including providing access to third parties.	Neil Fried; The Motion Picture Association of America	**EPDP Response:** **Action Taken:** [**COMPLETED / NOT COMPLETED**] – [Instruction of what was done.]