

See also <https://mm.icann.org/pipermail/gnso-epdp-team/2019-January/001321.html>

Temporary Specification Provisions	ICANN Org Question	EPDP Team Question
<p>RDAP / SLAs</p> <p>5.2 Registrar and Registry Operator SLA</p> <p>Registry Operator and Registrar acknowledge that in its implementation of a Registration Data Access Protocol (RDAP) service, they MUST comply with additional Service Level Agreements. ICANN and the contracted parties will negotiate in good faith the appropriate service levels agreements by 31 July 2018. If the contracted parties and ICANN are unable to define such Service Level Agreements through good faith negotiations by such date, ICANN will require Registrar and Registry Operator to comply with Service Levels that are comparable to those service levels already existing in their respective agreements with respect to RDDS.</p> <p>6.2 Registry Monthly Reports</p> <p>ICANN and Registry Operators will negotiate in good faith appropriate additional reporting requirements with respect to its implementation of RDAP by 31 July 2018. If ICANN and Registry Operators are unable to define such additional reporting requirements through good faith negotiations by such date,</p>	<p>The Temp Spec created a binding obligation for all contracted parties to implement RDAP, with SLAs and a profile, and reporting requirements. There were some early discussions on this topic, but the Initial Report does not address this section of the Temp Spec. It would be helpful if the EPDP can clarify if this means that this obligation should remain or be discontinued? If discontinued, how does the EPDP Team envision the requirements for redaction be supported? To inform EPDP Team discussions on this topic, RDAP is required under new gTLD RA but some legacy RAs do not have this requirement. Discussions are ongoing with contracted parties. In the absence of a clear policy requirement, the contracted parties have suggested this should be handled through contract negotiations. Is this the desire of the EPDP Team?</p> <p>This clause is not addressed in the Initial Report. Does that mean this</p>	<p>Should the requirements in the Temp Spec be confirmed by the EPDP Team in the Final Report?</p>

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<p>ICANN will require Registry Operator to comply with additional reporting requirements that are comparable to those already existing in its Registry Agreement with respect to RDDS</p> <p>Appendix A Registration Data Directory Services</p> <p>1.1. Registrar and Registry Operator MUST operate a Registration Data Access Protocol (RDAP) service. ICANN and the community will define the appropriate profile(s) by 31 July 2018. ICANN will subsequently give notice to implement such service, and Registrar and Registry Operator SHALL implement the service no later than 135 days after being requested by ICANN. Registrar and Registry Operator MAY operate a pilot RDAP service before the date upon which an RDAP service is required.</p>	<p>obligation should remain or be discontinued?</p> <p>The Temp Spec created a binding obligation for all contracted parties to implement RDAP, with SLAs, profile, and reporting requirements. There were some early discussions on this topic, but the Initial Report does not address this section of the Temp Spec. It would be helpful if the EPDP can clarify if this mean that this obligation should remain or be discontinued? If discontinued, how does the EPDP Team envision the requirements for redaction be supported? To inform EPDP Team discussions on this topic, RDAP is required under new gTLD RA but some legacy RAs do not have this requirement. Discussions are ongoing with contracted parties. In the absence of a clear policy requirement, the contracted parties have suggested this should be handled through contract negotiations. Is this the desire of the EPDP Team?</p>	

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<p>Appendix A 1.2. RDDS Search Capabilities</p> <p>1.2.1. Where search capabilities are permitted and offered, Registry Operator and Registrar MUST: (1) ensure such search capability is in compliance with applicable privacy laws or policies; (2) only permit searches on data otherwise available to the querying user, based on whether the user only has access to data publicly available in RDDS or whether the user has access to non-public Registration Data; (3) only provide results otherwise available to the querying user based on whether the user only has access to data publicly available in RDDS or whether the user has access to non-public Registration Data; and (4) ensure such search capability is otherwise consistent with the requirements of this Temporary Specification regarding access to public and non-public Registration Data.</p> <p>1.2.2. Where search capabilities are permitted and offered, Registry Operator and Registrar MUST offer search capabilities on the web-based Directory Service and the RDAP service (when implemented).</p>	<p>This clause is not addressed in the Initial Report. Does that mean this obligation should remain or be discontinued?</p>	<p>Should the requirements in the Temp Spec be confirmed by the EPDP Team in the Final Report or is this to be further considered in phase 2?</p>

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<p>Process for amendments to Registry – Registrar agreements</p> <p>6.3.2 RRA Amendments</p> <p>Registry Operator MAY amend or restate its Registry-Registrar Agreement to incorporate data Processing terms and conditions (which itself contains EU Model Clauses to govern international data transfers, where applicable between the respective parties) substantially similar to the requirements provided at <<https://www.icann.org/resources/pages/gtld-registration-data-specs-en/#6>> without any further approval of ICANN, provided that Registry Operator MUST promptly deliver any such amended or restated Registry-Registrar Agreement to ICANN. Upon ICANN's receipt thereof, such amended or restated Registry-Registrar Agreements will be deemed to supplement or replace, as applicable, the approved Registry-Registrar Agreement that is attached as an appendix (if any) to Registry Operator's Registry Agreement.</p>	<p>This clause is not addressed in the Initial Report. Does that mean this obligation should remain or be discontinued?</p>	<p>Should the process in the Temp Spec be confirmed as a policy recommendation, or is this to be addressed during implementation, or is it already addressed somewhere else?</p>

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<p>7.1. Notices to Registered Name Holders Regarding Data Processing. Registrar SHALL provide notice to each existing, new or renewed Registered Name Holder stating:</p> <p>7.1.1. The specific purposes for which any Personal Data will be Processed by the Registrar;</p> <p>7.1.2. The intended recipients or categories of recipients of the Personal Data (including the Registry Operator and others who will receive the Personal Data from Registry Operator);</p> <p>7.1.3. Which data are obligatory and which data, if any, are voluntary;</p> <p>7.1.4. How the Registered Name Holder or data subject can access and, if necessary, rectify Personal Data held about them;</p> <p>7.1.5. The identity and the contact details of the Registrar (as controller) and, where applicable, of the Registrar's representative in the European Economic Area;</p> <p>7.1.6. The contact details of Registrar's data protection officer, where applicable;</p> <p>7.1.7. The specified legitimate interest for Processing under Article 6(1)(f) of the GDPR;</p> <p>7.1.8. The recipients or categories of recipients of the Personal Data, if any;</p> <p>7.1.9. Where applicable, the fact that the Registrar intends to transfer Personal Data: (i) to a third country or international organization</p>	<p>This clause and all of its sub-parts are not addressed in the Initial Report. Does that mean this obligation should remain or be discontinued?</p>	<p>Is this required to be addressed in the Final Report or is this part of implementation or in direct consultation with registrars?</p>

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<p>and the existence or absence of an adequacy decision by the Commission; or (ii) in the case of transfers referred to in Articles 46 or 47 of the GDPR, or the second subparagraph of Article 49(1) of the GDPR, reference to the appropriate or suitable safeguards and how to obtain a copy of them or where they have been made available.</p> <p>7.1.10. The period for which the Personal Data will be stored, or if it is not possible to indicate the period, the criteria that will be used to determine that period;</p> <p>7.1.11. The existence of the right to request from the Registrar access to, and rectification or erasure of Personal Data, or restriction of Processing of Personal Data concerning the Registered Name Holder or data subject, or to object to Processing, as well as the right to data portability;</p> <p>7.1.12. Compliance with Article 6(1)(a) and Article 9(2)(a) of the GDPR, where the Registrar relies on consent of the Registered Name Holder for Processing;</p> <p>7.1.13. The right of the Registered Name Holder or data subject to lodge a complaint with a relevant supervisory authority;</p> <p>7.1.14. Whether the provision of Personal Data is a statutory or contractual requirement, or a requirement necessary to enter into a contract, as well as whether the Registered Name Holder</p>		

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<p>is obliged to provide the Personal Data, and the possible consequences of failure to provide such Personal Data; and</p> <p>7.1.15. The existence of automated decision-making, including profiling, referred to in Article 22(1) and (4) of the GDPR and, at least in those cases, meaningful information about the logic involved, as well as the significance and the envisaged consequences of such Processing for the data subject.</p> <p>The requirements of this Section 7.1 shall supersede and replace the requirements of Section 3.7.7.4 of the Registrar Accreditation Agreement.</p>		
<p>CONSENT –</p> <p>7.2 Additional Publication of Registration Data</p> <p>7.2.3. Where such Consent is sought by Registrar, the request for Consent SHALL be presented in a manner which is clearly distinguishable from other matters (including other Personal Data Processed based on a legitimate interest). The request for Consent SHALL be in an intelligible and easily accessible form, using clear and plain language. The Registered Name Holder SHALL have the right to withdraw its Consent at any time. The withdrawal of Consent SHALL NOT affect the lawfulness of Processing based on Consent obtained before the withdrawal.</p>	<p>This clause is not addressed in the Initial Report. Does that mean this obligation should remain or be discontinued?</p>	<p>[Isn't consent defined under GDPR with additional case law explaining what it means and doesn't mean? As such, is this necessary?]</p>

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<p>Appendix F: Bulk Registration Data Access to ICANN</p> <p>1. Contents. Registry Operator MUST only provide the following data for all registered domain names: domain name, domain name repository object id (roid), Registrar ID (IANA ID), statuses, last updated date, creation date, expiration date, and name server names. For sponsoring registrars, Registry Operator MUST only provide: registrar name, registrar ID (IANA ID), hostname of registrar Whois server, and URL of registrar.</p>	<p>This clause is not addressed in the Initial Report. Does that mean this obligation should remain or be discontinued?</p>	<p>Should the requirements in the Temp Spec be confirmed by the EPDP Team in the Final Report?</p>