

Data Retention: Review of ICANN Org Processes

EPDP Recommendation 15.1

1 November 2019

The [2013 Registrar Accreditation Agreement \(RAA\)](#)'s Data Retention Specification provides that ICANN-accredited registrars collect certain data, including personal data, from domain name registrants at the time of registration, and retain that data for specified periods of time.

To help inform continuing consideration of data retention requirements, ICANN org has reviewed its active processes and procedures to identify and document the instances in which it would request personal data from a registrar beyond the period of the life of the registration. The [Temporary Specification for gTLD Registration Data Expedited Policy Development Process Team](#) (Phase 1) Recommendation 15.1 anticipated that this input could be used in discussion of retention periods for specific data elements to be identified, documented, and relied upon to establish required relevant and specific minimum data retention expectations for registrars. The EPDP Team also recommended that community members be invited to contribute to this data gathering exercise by providing input on other legitimate purposes for which different retention periods may be applicable.

This document is provided to the EPDP Team in response to Recommendation 15.1 and in the context of the Team's Phase 2 work to describe the results of ICANN org's review.

Review Analysis

ICANN org has conducted this analysis in light of the EPDP Team's Phase 1 recommendations, which include provisions for the use of registration data elements for Compliance purposes.¹ This analysis is specific to uses of registration data for the time period after the life of the registration, with the understanding that existing data retention requirements that were not the subject of the EPDP remain in place. These include section 3.4 of the Registrar Accreditation

¹ The EPDP Phase 1 Recommendation 9 discusses requirements for registries and registrars to transfer to ICANN org the domain name registration data that they process when required/requested for purpose 5 (Contractual Compliance), noting that "this recommendation does not exclude other information required by ICANN Contractual Compliance to enforce ICANN consensus policies and contracts."

Agreement (RAA) and section 1.2 of the Data Retention Specification which covers retention of certain forms of data for a period of 180 days following the relevant transaction (less than the 18 months recommended by the EPDP in Phase 1).

ICANN org found this review challenging as there were few instances identified in which ICANN org itself was the intended user of retained data; however, ICANN org made every effort to review each active process and procedure to be as comprehensive as possible in regard to ICANN org activities touching on data retention by registrars.

The results of this review confirm and are consistent with previous efforts and inputs to the Team, included for reference below:

- [Description of 2013 RAA Data Retention Specification – Data Elements, Legitimate Purposes for Collection/Retention and Recipients of Data](#) (10 Aug 2015)

This document listed the data elements in the Data Retention Specification and the legitimate purpose(s) and intended recipients for each. Intended recipients included other registrars, registry operators, dispute resolution providers, financial institutions, courts, resellers, and other third parties. With regard to receipt of data by ICANN org, this document noted that: “According to Section 3.4.3 2013 RAA, Registrar shall make the data, information, and records specified in Section 3.4 available for inspection and copying by ICANN upon reasonable notice. This includes according to section 3.4.1.1 the data specified in the Data Retention Specification for the period specified therein.

The following purposes would warrant a request for inspection and copying of the relevant data by ICANN:

- ICANN conducting an audit for compliance with the provisions of the 2013 RAA, Specifications and/or Policies,
- Billing disputes in which ICANN is involved,
- Registrar disputes in which ICANN is involved (including the case of replacement of the original Registrar),

- Fraud prevention and investigation (by a public authority in case of a concrete suspicion of a criminal or administrative offense or by ICANN in case of evidence or a concrete allegation of non-compliance of a Registrar with the provisions of the 2013 RAA).

Further according to Section 3.4.3 2013 RAA, Registrar shall deliver copies of such data, information and records to ICANN in respect to limited transactions or circumstances that may be the subject of a compliance-related inquiry upon reasonable notice and request from ICANN; provided, however, that such obligation shall not apply to requests for copies of the Registrar's entire database or transaction history. The following purposes would warrant a request for delivery of copies by ICANN:

- In case of evidence or a concrete allegation of non-compliance of a Registrar with the provisions of the 2013 RAA, Specifications and/or Policies.”

This document was created, and revised after public comment, in furtherance of ongoing discussions directed toward reaching agreement on the scope of data retention waivers under the 2013 RAA.

- [Summary of Contractual Compliance Data Processing Activities](#) (7 Dec 2018)

This document describes the personal data that is processed, the processing activities, and the legal basis for ICANN org's processing of personal data via Compliance tickets and the Contractual Compliance Audit Program, as well as describing procedures for its own retention of such data.

- [Contractual Compliance Responses to EPDP](#) (25 Jan 2019)

This includes a request from the EPDP Team for “ICANN Compliance to provide more specificity regarding necessary retention periods, and the rationale for retention after the domain registration is deleted. This information is necessary to justify any retention period to a DPA. Providing use cases where registration data is needed after the registration expiration would be helpful to explain relevant retention periods.”

ICANN org responded with the following information from the Contractual Compliance team: “Upon conducting a manual review of a limited number of complaints processed by ICANN Contractual Compliance, the team found examples of complaints regarding domain names that had been deleted or transferred from a prior registrar in the following time periods before the complaints were filed with ICANN: over 6 months, 22 months, 2 years, 3 years, 4 years, 5 years and 9 years. In all examples, the registrars were able to provide the information and data that was subject to the Registrar Accreditation Agreement’s two year data retention requirement and requested by ICANN Contractual Compliance. These complaints appeared in a variety of complaint types, including domain renewal, transfer and UDRP.”

At this time, the only instance where ICANN org has identified a continuing need to request data from a registrar following the life of a registration is in investigation of a compliance complaint. It should be noted that Contractual Compliance does not prescribe the data retention periods and will perform its function to the extent possible within the applicable period. For example, in the interest of resolving reporter concerns, ICANN org may make an inquiry of the registrar concerning data beyond the retention period; however, such an inquiry does not modify the Registrar or Registry Operator’s data retention requirements.

Ability for ICANN org to request data from a registrar beyond the life of the registration for Contractual Compliance purposes is particularly important in the investigation of complaints regarding expiration or renewal of a domain name registration. For example, if a complaint alleged that a registrar failed to send the required notifications to a registered name holder prior to expiration, ICANN org would be unable to assist with this complaint if no data following the life of the registration was available.

It is important to note that certain policies may contain requirements for registrars to retain records which may contain personal data, and which are outside the scope of the Data Retention Specification, for example: the Transfer Policy requires registrars to retain copies of the Forms of Authorization (FOAs) used for a given transfer, and the Transfer Dispute Resolution Policy charges dispute resolution providers with reviewing Whois output, as well as the FOAs and related communications. The data retention requirements per recommendation 15.2 do not affect requirements for other records to be retained under the applicable contracts

and policies or exclude ICANN Contractual Compliance from requesting other information required to enforce ICANN consensus policies and contracts.

It is also important to note that the Data Retention Specification is not intended solely to support ICANN org's uses of data but also to help protect the registrant in scenarios like the expiration case mentioned above, and to enable availability of data for third parties in support of legal proceedings, resolution of security and stability issues, or other purposes. The Data Retention Specification is in place in the context of ICANN org's accreditation of registrars and provides for data that might be used by ICANN org but also supports uses relating to security and stability, continuity of technical service, and other areas. The data retention period in the Data Retention Specification provides for ICANN requirements, but other relevant requirements may apply per local laws.

ICANN org also notes a potential gap in that the Phase 1 recommendations contain no requirements for registry operators to retain data, though the recommendations contemplate that a registry will also possess registration data.

BACKGROUND

Current Requirements

Per the RAA Data Retention Specification, registrars retain the following elements for the life of the registration + two years:

- 1.1.1. First and last name or full legal name of registrant;
- 1.1.2. First and last name or, in the event registrant is a legal person, the title of the registrant's administrative contact, technical contact, and billing contact;
- 1.1.3. Postal address of registrant, administrative contact, technical contact, and billing contact;
- 1.1.4. Email address of registrant, administrative contact, technical contact, and billing contact;
- 1.1.5. Telephone contact for registrant, administrative contact, technical contact, and billing contact;

- 1.1.6. WHOIS information, as set forth in the WHOIS Specification;
- 1.1.7. Types of domain name services purchased for use in connection with the Registration; and
- 1.1.8. To the extent collected by Registrar, "card on file," current period third party transaction number, or other recurring payment data.

Per the Data Retention Specification, registrars retain the following elements for 180 days following the relevant interaction:

- 1.2.1. Information regarding the means and source of payment reasonably necessary for the Registrar to process the Registration transaction, or a transaction number provided by a third party payment processor;
- 1.2.2. Log files, billing records and, to the extent collection and maintenance of such records is commercially practicable or consistent with industry-wide generally accepted standard practices within the industries in which Registrar operates, other records containing communications source and destination information, including, depending on the method of transmission and without limitation: (1) Source IP address, HTTP headers, (2) the telephone, text, or fax number; and (3) email address, Skype handle, or instant messaging identifier, associated with communications between Registrar and the registrant about the Registration; and
- 1.2.3. Log files and, to the extent collection and maintenance of such records is commercially practicable or consistent with industry-wide generally accepted standard practices within the industries in which Registrar operates, other records associated with the Registration containing dates, times, and time zones of communications and sessions, including initial registration.

The Data Retention Specification also provides that, under certain circumstances, a registrar may provide written notice to ICANN of a legal opinion, ruling, or written guidance from a governmental body of competent jurisdiction providing that compliance with the data collection and/or retention requirements of the Data Retention Specification violates applicable law, and request a waiver from compliance with specific terms and conditions of the specification. This occurs via the [ICANN Process for Handling Registrar Data Retention Waiver Requests](#).

The [Temporary Specification for gTLD Registration Data](#), adopted on 17 May 2018, provides that:

The Processing of the limited Personal Data identified in this Temporary Specification is necessary to achieve the legitimate interests identified, as documented in many stakeholder comments and submissions over the course of a 12-month community consultation. This Processing specifically includes the retention of Personal Data already collected and the ongoing collection of Personal Data.

Work in Progress

On 19 July 2018, the GNSO Council initiated an Expedited Policy Development Process (EPDP) and chartered the EPDP on the Temporary Specification for gTLD Registration Data team (“EPDP Team”). The charter called on the EPDP Team to determine if the [Temporary Specification for gTLD Registration Data](#) should become an ICANN consensus policy as is, or with modifications. In addition, the result was expected to comply with the EU’s General Data Protection Regulation (GDPR) and take into account other relevant privacy and data protection laws.

The EPDP Team’s Phase 1 work included consideration of charter questions concerning data retention, including:

- g1) Should adjustments be made to the data retention requirement (life of the registration + 2 years)?
- g2) if not, are changes to the waiver process necessary?
- g3) In light of the European Data Protection Board (EDPB) [letter](#) of 5 July 2018, what is the justification for retaining registration data beyond the term of the life of the registration?

The Phase 1 Team’s recommendations in response to these charter questions included its recommendation 15.1 concerning ICANN org’s review of instances where it requested personal data from registrars beyond the life of a registration.

Per other components of the Phase 1 Recommendation 15, the team recommended (15.2) that, in the interim pending Phase 2 recommendation, registrars be required to retain only those data elements deemed necessary for the purposes of the [Transfer Dispute Resolution Policy](#), for a period of fifteen months following the life of the registration plus three months to implement the deletion, i.e., 18 months. The Team also recommended (15.3) that registrars not be prohibited from setting their own retention periods, if required by law, legal proceedings, or other appropriate legal basis, which may include [Requesting a Waiver of Data Retention Obligations](#) as appropriate. In addition, per recommendation 15.4, ICANN org is reviewing the current data retention waiver procedure covering the areas of efficiency, request response times, and GDPR compliance, and will provide this report to the Phase 2 team under separate cover.

Next Steps/Moving Forward

Because it is important to identify other needs and uses by third parties impacted by availability of data from registrars, the recommendation anticipated a community consultation to inform further discussion. As envisioned in the EPDP Team's recommendation 15.1, a next step would be to invite community members to contribute to this data gathering exercise by providing input on other legitimate purposes for which different retention periods may be applicable.

According to the [Public Comment Guidelines for the ICANN Organization](#), a Public Comment proceeding is the default mechanism when seeking feedback from the ICANN community or general public, but alternatives include a community consultation process or survey for seeking targeted feedback from specific audiences.

ICANN org is available to support preparing the materials for consultation to identify the purpose based on guidance on what kind of input will be most helpful to the Team. ICANN org would also assist with compiling and providing the input received to the Team.