ICANN org Review of Public Comments

Registration Data Consensus Policy for gTLDs

ICANN org
28 April 2023

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1. Introduction:

ICANN org appreciates the chance to gather feedback from the ICANN Community and expresses gratitude to those who participated in the Registration Data Policy public comment proceeding. ICANN Org's EPDP Phase 1 Implementation project team (IPT) carefully reviewed and considered all input received and organized comments into the following sections:

- Major Themes of comments received
- Specific Comments that resulted in changes to the draft Registration Data Policy and/or Redlined Policies and Procedures
- Specific Comments considered that did not result in changes to the draft Registration Data Policy and/or Redlined Policies and Procedures

2. Major Themes of comments received:

1. **Public Comments regarding Data Protection Agreements (DPA)**
    a. The IPT recieved input in several comments regarding:
        i. The length of time required to complete negotiations of the recommended Data Protection Agreements,
        ii. Lack of clarity around the obligations and roles of each party entering the Data Protection Agreements,
        iii. Whether the draft policy language remained consistent with the EPDP Phase 1 policy recommendations, because recommendation 19 requires contracted parties to enter into DPAs, as appropriate.
        iv. The agreements' impact to the Thick WHOIS Policy,
        v. The desire for an update method for the DPA once published.

    b. The IPT acknowledges the concerns raised regarding the recommended Data Protection Agreements. Many segments of the community, in this public comment proceeding and elsewhere, have emphasized that negotiations between ICANN org and the contracted parties must be finalized and additional information about the results of this negotiation must be shared with the broader community as a matter of urgency. ICANN org and the contracted parties house negotiation group have been negotiating to find an acceptable solution for all parties involved, but have not yet agreed on a resolution to a few, final issues. The IPT will share a draft when the negotiations are complete. For clarity and transparency, the IPT can confirm that any template agreement negotiated and agreed to by ICANN and the contracted parties house negotiation group to implement the EPDP Phase 1 recommendations will include the Purposes for processing gTLD Registration Data as identified in Recommendation 1 of the EPDP Phase 1 working group.
    c. The IPT respectfully disagrees with the suggestion that any changes to the DPAs entered into between ICANN and a contracted party would require public comment, as this is an

agreement between two parties, rather than a Consensus Policy. Regarding obligations and responsibilities, the IPT notes that the EPDP recommendations stated that the parties must enter required data protection agreements as appropriate. To clarify, the recommendations did not require that each contracted party must enter into a data protection agreement with ICANN or that the registries must have a DPA with each registrar they work with.

Section 5 of the Registration Data Policy sets out that either the registry or registrar may choose to request a DPA, specifically noting, *"If Registry Operator or Registrar determines that such agreements are required by applicable law, it MUST make the request without undue delay pursuant to this policy."*

Regarding the impact of the DPA on the Thick WHOIS Policy, the draft Data Processing Specification currently being discussed between ICANN and the contracted parties would have no impact on a registry's obligation to transfer contact data (or lack thereof). This is a policy requirement, rather than a matter to be addressed in the draft Specification.

2. Public Comments regarding the recent adoption of the Directive on measures for a high common level of cybersecurity across the Union (the "NIS2 Directive")

a. The IPT received input in several comments regarding:

   i. The newly adopted NIS2 Directive and its impact on the proposed Registration Data Policy, including input regarding the Thick WHOIS Policy and the EPDP Phase 1 recommendations on transfer of registration data.

b. The IPT would like to clarify that, absent a conflict that would prevent a contracted party from complying with both local law and an ICANN Consensus Policy, requirements under local law have no direct impact on ICANN policy requirements. It is possible (and indeed, likely under NIS2) that some contracted parties will be required to take steps in addition to those required by the Policy, but these are laws, rather than ICANN policies. As such, they are enforced by local regulators and courts, not ICANN. The EPDP Phase 2a team made a policy decision not to require the contracted parties to take different measures related to the data of legal persons, which was approved by the GNSO Council and adopted by the Board. If the ICANN community wishes to modify policy requirements in light of changes in law, there are mechanisms to do so (e.g. the consensus driven, bottom-up, multi stakeholder policy development process).

3. Public Comments regarding Thick WHOIS

a. The IPT received a large amount of input from the ICANN community regarding the Thick WHOIS Policy

   i. The IPT would like to clarify that the policy language regarding the transfer of registration data from registrars to registries was discussed extensively and is consistent with guidance from the GNSO Council and Board direction. The incorporated implementation notes were included to make clear how this provision would be enforced by ICANN org. Specifically, within the draft Registration Data Policy, the decision regarding whether a registry will receive

the "additional" data or not will depend on the registry and registrar determining the legal basis for the transfer and entering into a data protection agreement that covers the data, where these are required by law.

After receiving input from the GNSO Council, The IPT, in consultation with the Implementation Review Team, concluded that ICANN org could enforce a transfer requirement only if the relevant contracted parties agree that a legal basis exists for the transfer and a data protection agreement is in place. If additional requirements for the transfer of registrant contact data from registrars to registries apply to the parties under local laws, such local laws may be considered by the contracted parties when determining whether a legal basis exists for the transfer of registration data from registrar to registry. However, ICANN's role is limited to enforcing ICANN policies and agreements and does not extend to enforcing local laws.

4. Public Comments regarding the "Reseller" Field

a. The IPT received various inputs concerning the option to collect, transfer, and publish the reseller field.

i. After careful consideration of the public comments received, the IPT determined that additional changes should not be made to the policy language pertaining to the requirements related to the reseller field. There is no indication that the draft policy was drafted incorrectly, and the EPDP Phase 1 team determined that the collection, transfer, and publication of the reseller field remain optional. The draft policy language maintains the status quo as org recognizes that current business practices allow for the optional collection, transfer, and publication of the reseller field. Thus, the IPT believes that making any recommended changes is beyond the scope of the policy as it would create additional changes that are not required by the EPDP Phase 1 recommendations.

5. Public Comments regarding Response Times to Urgent Requests to Disclose non-public Registration Data

a. The IPT received a large amount of input concerning the definition of urgent requests and asserting that the draft Registration Data Policy failed to implement expedited timeframes consistent with the urgency required to respond to urgent requests.

i. The IPT acknowledges the concerns raised regarding the time period allotted to respond to urgent requests for disclosure of registration data. After careful consideration and taking into account the feedback received, the IPT believes there is sufficient justification to revisit the policy language and to require a 24-hour response time for urgent requests. The IPT believes that the 24-hour response time accurately reflects the intent of the EPDP policy recommendations, particularly in cases where urgent requests rise to the level of emergencies and are made to prevent harm to individuals or critical infrastructure, such as those related to threat to life, human life and child exploitation. The 24-hour time period allows urgent requests to be addressed sooner to prevent harm through identifying the perpetrator for the disruptive action or the victim for notification or both. The IPT also notes that the draft Registration Data policy language includes a narrow definition of what

constitutes an "urgent request", which only applies to circumstances that pose an imminent threat to life, of serious bodily injury, to critical infrastructure, or of child exploitation. The limited definition presents a high threshold and minimizes the likelihood of Registry Operators/Registrars receiving requests that meet the standard of urgent frequently or in a high volume. Furthermore, the IPT removed the term "business days" from the response time requirement, as it is subject to different interpretations in different regions, and is not required by the EPDP Phase 1 team as the term “business days” appears in brackets in the Final Report. This change will help to ensure that acknowledgments are provided within the intended timeframe of 24 hours rather than potentially extending beyond 2 calendar days. Lastly, the proposed 24-hour time period aligns with Section 3.18.2 of the 2013 RAA which *“requires registrars to maintain a designated abuse point of contact to receive reports of abuse involving illegal activity by law enforcement, consumer protection, quasi-governmental or other similar authorities. Registrars must review well-founded reports of Illegal activity submitted to the contact within 24 hours by an individual who is empowered to take necessary and appropriate actions in response to the report.”* Specifically, registrars already are required to have a Law Enforcement Agency (LEA) abuse contact that must review reports of abuse involving illegal activity within 24 hours, thus Registrars could leverage that type of contact which is already in place.

6. Public Comments that were determined to be out of scope for the Registration Data Policy

a. The IPT received several comments on areas which, following further review, were determined to be beyond the scope of this implementation, as the EPDP Phase 1 did not include recommendations to support the following suggestions:
    i. The expansion of the scope of the Registration Data Policy, because the scope of the Registration Data Policy is strictly limited to the processing activities listed in the policy.
    ii. Inclusion of requirements related to costs and mechanisms to disclose Registration Data, specifically;
        1. Ensuring disclosure requests are free of charge
        2. Providing criteria for contracted parties to determine whether or not to disclose Registration Data.
        3. Independent mechanisms for users and registrants to consent to disclosure of data and gain clarification of what data is or is not required to be collected under the Registration Data Policy.
        4. Providing an independent mechanism to notify users and registrants of requests for access to nonpublic registration data, as registrars and registries will likely have notification requirements based on jurisdictional law.
        5. Mechanism to inform users of a location and process for submitting disclosure requests. Inclusion of a direct link to a page where the

mechanism and process for submitting Disclosure Requests is detailed in the policy.

iii. Defining which entities should or should not be considered "Resellers" to the extent entities exist within the registrar distribution channels.

iv. Inclusion of public identifiers in the draft policy to improve accountability and protect natural person's data.

v. Substitution of "technical contact" for the "administrative contact" within Transfer Policy.

vi. The distinction between legal and natural persons.

1. The IPT further clarifies that the draft Registration Data Policy requirements do not explicitly distinguish between the registration data of legal and natural persons, because, as a matter of policy, the ICANN community determined not to require contracted parties to take different measures related to the data of legal persons. However, the EPDP Phase 2a recommendations allow contracted parties the option to include additional data elements which may be used to distinguish between legal and natural persons.

3. Specific Comments that resulted in changes to the draft Registration Data Policy and/or Redlined Policies and Procedures:

The IPT appreciates the comments received form the community which resulted in the following changes in the draft Registration Data Policy:

1. **Introduction**
    a. The IPT received input suggesting that section 1 should include the defined term of "processing".
        i. Following further review, the suggested changes were made to section 1 of the policy to describe that the Registration Data Policy applies to all aspects of registration data.
2. **Section 2: Scope**
    a. The IPT received input suggesting the language "other purposes" in Section 2 of the policy would benefit from further clarity.
        i. Following additional review, the IPT determined that the language "other purposes" created confusion related to purpose and intent of the language. For clarity, the language "*Registry Operator's and Registrar's Processing of Personal Data contained in Registration Data for purposes other than the purposes identified in the Data Protection Agreement required by Section 5 is beyond the scope of this Policy*" was incorporated into Implementation Note A, as it directly relates to the processing described in the Implementation Note.
3. **Section 3: Definitions and Interpretation**
    a. The IPT received input noting that the definition of "Urgent Request" contained a grammatical/semantic error.
        i. Following additional review, the IPT made the suggested changes in section 3.8 of the draft policy.

b. The IPT received input suggesting that section 3.10 should be deleted because it was inconsistent with contract drafting principles.
    i. The IPT conducted a comprehensive review of every time "or" is used throughout the draft policy to determine whether requirements would change without this definition and determined that this section could be deleted. In order to avoid impacts to the requirements of the policy as a result of deleting section 3.10, minor grammatical changes were made in several sections of the policy as identified in the redline.

4. Section 9: Publication

a. The IPT received input suggesting that section 9.2.1 in the draft policy should be split into subsections for added clarity.
    i. Following further review, the IPT agreed that the suggested changes will add clarity and incorporated the changes to the draft policy.
b. The IPT received input noting that section 9.2.4 should clarify that registrars provide the opportunity for the RNH to consent to publication. Following further review, the IPT included the suggested clarification in the implementation notes of the draft policy.

5. Section 10: Disclosure Requests

a. The IPT received multiple inputs from the community noting that the urgent requests response period in the draft policy did not accurately reflect the importance of "urgent requests".
    i. Following further review, the IPT believes that requiring a 24-hour response time for urgent requests accurately reflects the nature of "urgent requests", particularly those that present potential harm to individuals, such as threat to life, of serious bodily injury and of child exploitation. Thus, section 10.5 of the draft policy was updated to reflect this urgency. Please see section 3 for additional information regarding the input received on response times to urgent requests for disclosure.

6. Background

a. The IPT received input noting the background section of the draft policy should reflect important considerations of the EPDP Phase 1 team including the publication of its Final Report.
    i. Following further review the IPT has incorporated the suggested changes to the background section of the draft policy.

7. URS Procedure

a. Following the review of the input received on the redlined URS Procedure, the IPT included a footnote in section 4.2 which clarifies the term "Registration Data", which is meant to have the same meaning as it is given in the Registration Data Policy.

4. Specific Comments considered that did not result in changes to the draft Registration Data Policy and/or Redlined Policies and Procedures

3.1 Input suggesting Additional Clarifications		
Input Received		**Implementation Project Team Response**
Section 3: Definitions and Interpretation		
3	"Unless there is a compelling reason, **all definitions in the policy should reside in this section.** For example, Section 9.2.2. Defines "Redact", and Implementation Note H defines "Creation Date". **For clarity,** these **definitions should be moved to Section 3**." **(RySG)**	In response to the RySG's concerns regarding definitions residing outside section 3, the IPT clarifies that the definitions placed outside of Section 3 are not intended to be standardized throughout the draft policy language and are only applied to the appropriate sections based on their specific requirements. For example, Section 9.2.2, which defines redaction, is only applied in the manner as specified in section 9.2.2
Section 6: Collection of Registration Data		
6.3	"The RrSG notes that **recommendation 6.3 applies only at the time of registration,** and suggests that **to ensure PII is not inadvertently disclosed publicly,** that **these requirements also apply when technical contact information is updated**. The RrSG is also concerned that **registrars** may not have a direct relationship with the technical contact, and **may not be able to properly obtain consent to display PII**. The IRT should resolve this ambiguity." **(RrSg)**	To address the concerns raised regarding properly obtaining consent to display PII, the IPT will provide further clarification in its educational materials, which will be available once the Registration Data Policy is published. Additionally, the IPT notes that it is up to each individual registrar to determine the appropriate methods to obtain consent to display personal data based on the registrar's individual jurisdiction, business model, and legal obligations.
6.7	"The RySG is aware that the **global legislative environment continues to evolve** and believes that **a slight addition to Section 6.7 would add clarity** to what is allowable as part of this section. Suggested amendment (additional text between **): ***6.7. Registrar MAY collect additional data elements as required by its Registry-Registrar Agreement and/or the Registry Operator's Registration Policy***, **including if required by law*" **(RySg)**	The IPT notes that as registrars and registries are required to abide by applicable laws and regulations (pursuant to both the law and the underlying ICANN agreements), the IPT believes the additional language is not necessary for additional clarity. The IPT also notes that the underlying principle that ICANN policy should not create a conflict with applicable law is consistent with Section 1.2 of ICANN's Bylaws, which requires that ICANN "carry out its activities in conformity with relevant principles of international law and international conventions and applicable local law."

Section 7: Transfer of Registration Data from Registrar to Registry Operator		
7.2	"The RrSG notes that while recommendation 7.2 refers to "Registrar Whois Server", concurrently **the RA and RAA are being amended to primarily replace whois obligations with RDAP requirements**. While registrars may continue to provide whois service after the transition from whois to RDAP, **the recommendations should include a reference to this change to avoid future ambiguity.**" **(RrSG)**	The IPT would like to note that while the draft policy does not specifically reference the amendments in process, the policy accounts for this logic within the collection section to account for updates that will be made to the RAA and RA, which will then flow to other processing requirements. Furthermore, the IPT provided its rationale in Drafting error 2.4 which notes *"Registrar Whois Server" value is only required to be generated if required by the Registrar Accreditation Agreement or ICANN Consensus Policy.*
Section 10: Disclosure Requests		
10.1	"**Section 10. Requires "Registrar and Registry Operator** MUST **publish on their homepage** a direct link to a page **where the mechanism and process for submitting Disclosure Requests is Detailed**". The relevant source recommendation, Recommendation 18, refers to the fact that "Registrars and Registry Operators must publish, in a publicly accessible section of their website, the mechanism and process for submitting Reasonable Requests for Lawful Disclosure". **The policy recommendations deliberately do not use the word "homepage" as this is not always the best or most appropriate place to provide the link.** Some **flexibility should be given to Registrars and Registry operators to make that determination**. **(RySG)**	While drafting the policy language, the IPT received feedback from the IRT noting the difficulty in locating information regarding disclosure requests. After careful consideration, the IPT determined that maintaining the term "homepage" would benefit those seeking to submit disclosure requests, for registrars' and registry operators' websites to have a designated location that provides a direct link to a page where mechanisms and processes to submit disclosure requests are available OR reside.
10.6	**"10.6 uses the ambiguous term "business days" and should rather specify that it is the registrar's business days that are relevant.** Tucows' **Recommended Language** for Section 10***: For Urgent Requests for Lawful Disclosure, Registrar and Registry Operator MUST acknowledge and respond without undue delay, but no more than two (2) business days (as determined by the recipient) from receipt***." **(Tucows)**	The IPT acknowledges that the term "business days" includes certain ambiguities. However, the IPT discussed this topic at length with the Implementation Review Team (IRT) and determined that the"business days" provision should refrain from incorporating interpretations subjective to contracted parties as it would create further ambiguity for users who request access.
Section 12: Retention of Registration Data		

12	"Rec #15 arrived at 18 months as an "interim"retention period. **The final determination of retention period may be longer, based on legitimate purposes** identified through community consultation." **(BC)**	The IPT notes that the retention period in the Registration data policy represents the minimum period identified for which data must be retained for Transfer Dispute Resolution Policy (TDRP) purposes. Contracted parties must determine themselves the appropriate retention period for data retained beyond this required period.
Addendum I		
	"While **this section** accurately reflects the Policy Recommendation language, we think it **could be more clear.** Tucows' **Recommended Language for Addendum I**: *Note: this* ***Addendum I applies to contracted parties providing WHOIS (available via port 43) or web-based Whois directory services only if required by the Registrar Accreditation Agreement or ICANN Consensus Policy." (Tucows)***	After further review, the IPT determined that Addendum I does not require further clarification. The Educational Materials will be available for implementers to review once the Registration Data Policy is published. The IPT also encourages reviewing the RDAP amendments in the RAA & RA for additional clarity.
3.2: Input suggesting the draft Policy Language Does Not Accurately Reflect the Policy Recommendations		
Input Received		**Implementation Project Team Response**
Section 2: Scope		
2.2	**"Section 2.2 is incorrect and inappropriate as drafted.** This policy's scope is not limited to only the purposes listed in yet to be created Data Protection Agreements "DPA" (and assuming agreements are in place, they would be subject to change over time). The **scope of this policy clearly includes the following** processing, notwithstanding the existence of further Data Protection Agreements: **collection; processing; publication; and, importantly, disclosure to third parties as required by this policy and/or governing law.** The **absence of** required **DPAs has put numerous initiatives at ICANN in limbo**. This certainly true for any type of program that contemplates data management and access. The **IPC reiterates the urgency of ICANN completing negotiations with the Contracted Parties to facilitate**	The IPT clarifies that each section of the draft Registration Data Policy addresses the topics of collection, processing, publication, and disclosure. Thus, the inclusion of the suggested topics in Section 2.2 is not required. For added clarity, the reference to "other purposes" in the draft section 2.2 posted for public comment has been moved to Implementation note A.

	data processing and data access to the benefit of the entire multistakeholder community." (IPC)	
Section 3: Definitions and Interpretation		
3.9	**"Delete 3.9, or specifically call out the definitions in those agreements since there may be contradictions or unintended consequences.** For example, **the terms "natural person" and "legal person" are not defined**. While these terms often have standard meanings in a country's laws, those standard meanings differ from country to country. **To facilitate better compliance with privacy regulations in the future, these terms should be defined." (BC)**	Regarding section 3.9 which notes *"Terms capitalized but not defined in this Policy SHALL have the meaning given to them in the Registry Agreement or Registrar Accreditation Agreement, as applicable",* the IPT notes that this only applies to the terms capitalized within the draft Registration Data Policy. Legal person and natural person are not capitalized or defined in the policy, as the EPDP Phase 1 team did not require defining the terms "legal" and "natural" as part of policy. Additionally, the terms "legal" and "natural" persons may be defined differently based on applicable laws and regulations in different jurisdictions..
3	"The **GAC acknowledges the role of the GDPR in serving as a catalyst for this policy** and notes that **the precise wording of these definitions has no bearing on parties' obligations to comply with applicable law.** Nevertheless, the **GAC recommends that in some circumstances greater specificity could be useful, including on "consent**" (the GDPR requires the provision of consent for each purpose.) and **"personal data," which would benefit from greater clarity around the meaning of an identifiable natural person.** Further, the GAC recommends the addition of text **making clear that no costs will be borne by those willing to access "published" data.** Finally, while the GAC is cognizant of maintaining a narrowly tailored set of circumstances warranting "urgent requests for lawful disclosure," to ensure contracted parties are able to respond efficiently to these requests, the **GAC recommends that this category of urgent requests include "imminent or ongoing serious cybersecurity incidents"** (such as those deriving from large scale ransomware, malware or botnet campaigns, which may for example affect consumer protection and would require an immediate need for disclosure) **regardless of whether the target is critical infrastructure.**" **(GAC)**	The IPT acknowledges the benefit of clarifying certain terms in the draft Registration Data Policy and would like to note the use of the terms "personal data" and "consent" are consistent with how they are used in the EPDP Phase 1 policy recommendations. Additionally, the IPT decided against incorporating the clarification regarding costs borne to those who request access into the draft policy language as it goes beyond the scope of the EPDP Phase 1 recommendations.

Section 4: Policy Effective Date		
4	"The EPDP Final Report called for implementation of the recommendations one year from the Report (which was published in 2019 (almost three years ago). **There is no reason that the EPDP's recommended proposed timeline for implementation should be ignored. By the time** the final policy documents are approved and **the 18 month period begins to run, it will likely be** implemented in **late 2024**, **which will be over 5 years from the Final Repor**t, which is highly **problematic for an expedited policy process**." **(BC)**	Regarding implementation timing the IPT would like to reiterate several challenges faced during the Expedited Policy Development Process (EPDP), e.g., interaction with evolving legislation and legal guidance, time pressure, have also carried over and impacted the implementation work. Some of the factors affecting the progress of the implementation work have included: (a) Several recommendations were subject to varying interpretations and in some cases were escalated, using established processes, to the Board and GNSO Council to help resolve. An example of an escalated case is Recommendation 12 regarding the deletion of the Registration Organization Field which required the Board to adopt the GNSO Council supplemental guidance, which was not reached until 24 February 2022. (b) The implementation of the Registration Data Policy required an impact analysis of all existing consensus policies, often requiring multiple reviews and further updates to related policies. (c) The implementation work also adjusted to include the expanded scope of the EPDP Phase 2 Priority 2 recommendations which required analyzing and incorporating a new set of Board adopted policy recommendations. Each of the factors mentioned played a role in extending the Phase 1 implementation timeline due to their unique levels of complexity. Lastly, the IPT consulted with the contracted parties to determine the amount of time required to implement the Registration Data Policy and no concerns were raised when the IPT discussed the proposed 18 month implementation timeline with the IRT.
4	"The EPDP Recommendations were issued in February 2019 and expected to be approved by the GNSO and Board in short order. The EPDP team (including representatives of contracted parties) understood that it would take some time to translate the recommendations in to policy and then to have contracted parties implement that policy. Accordingly, **Recommendation 28 extended the validity of terms within the Temporary Specification to allow for the creation and implementation of the policy**. After due consideration **the EPDP team set a deadline for contracted party compliance** at 29 February 2020 (**1 year after issuance of the Phase 1 report).** Clearly the EPDP team underestimated the amount of time needed to translate the recommendations into policy. However, **the EPDP team, including registry and registrar representatives unanimously believed that the allowed period was sufficient for contracted party implementation**. Given Recommendation 28, and the fact that these recommendations are reasonably consistent with the Temporary Specification, and that the differences have been well known now for several years, the **ALAC believes that allowing an additional 18 months for contracted party implementation is excessive and uncalled for. (ALAC)**	
Section 5: Data Protection Agreements		

5	"We strongly urge **ICANN to collaboratively finalize and then sign the DPA which has been in discussion for several years**. The language in the Draft Registration Data Consensus **Policy is ambiguous where the Recommendations of the EPDP Phase 1 are not.** For example, the Draft Registration Data Consensus **Policy says "relevant third party providers" but does not indicate who can designate third party providers as "relevant".** The EPDP **Phase 1 Recommendations** clearly **intended Contracted Parties to be able to designate third party providers, both to themselves and to ICANN, as "relevant".** Further, **ICANN MUST enter into data protection agreements with Data Escrow Providers** but the language in the Draft Registration Data Consensus **Policy allows ICANN to avoid this requirement because of its linguistic ambiguity.** Tucows' **Recommended Language for Section 5**: ***If Registry Operator or Registrar determines that such agreements are required by applicable law, Registry Operator and Registrar MUST make the request without undue delay pursuant to this policy for data protection agreements between the Contracted Party and ICANN and for data protection agreements between ICANN and a relevant third party provider. ICANN MUST without undue delay enter into data protection agreement or agreements upon such request." (Tucows)***	The IPT notes that the language in section 5 of the draft policy was discussed at length with the IRT. After careful consideration of the input provided, the IPT is unable to include this addition into the policy as it includes additional requirements which are outside the scope of the EPDP phase 1 recommendations.
Section 6: Collection of Registration Data		
6.1	"In 6.1**, Registrars should not** have an option to **exclude the Organization Field when collecting registrant dat**a, since it is a mandatory field for any registrant that is an Organization. As a result, **6.1 needs to be updated to require Organization after the Name Field. I**n 6.1**, Registrars should** not have an option to **exclude Technical Fields,** since it is a mandatory field if the registrant elects to provide it. As a result, **6.1 must be updated to require these fields as reflected in the table in the Phase 1 Final Report**. The **Reseller Field also is required to be listed in the fields collected by the Registrar in 6.1**, as was clear in the EPDP Phase 1 Final Report. Reseller can be left blank if the Registrar does not use resellers. But	The IPT acknowledges the concerns raised regarding section 6 of the draft policy and notes that these topics were discussed at length with the IRT to assist in drafting the policy language in line with the EPDP Phase 1 recommendations. For further clarification, regarding input on the exclusion of the technical fields, the IPT would like to note the policy recommendations identify the technical fields as optional for registrars to offer and for the registered name holder to provide, therefore the policy language was drafted to note that the technical field is optional for the Registered Name Holder to complete (and if the Registrar provides this option). Additionally, the IPT clarifies that Recommendation 12 specifically notes that the "Registrar MUST provide the opportunity for the Registered Name Holder to provide values for the following data elements. If provided by the Registered Name Holder, Registrar MUST

	reseller data needs to be processed if the data is provided, per the Final report in the footnote where it says "In both cases, if data is provided, it must be processed." (Footnote 7 on page 7 of the final report) **The WHOIS Server field** is also **required and was not a drafting error** as suggested by the Report: ""Registrar Whois Server" value is only required to be generated if required by the Registrar Accreditation Agreement or ICANN Consensus Policy.(See"Drafting Error" 2)" **This element needs to be preserved.** As a result, **the last sentence of 6.1 must be deleted**. Indeed the sentence is inconsistent since it states that "Registrar Whois Server" value is only required to be generated if required by the Registrar Accreditation Agreement or ICANN Consensus Policy.(See"Drafting Error" 2)." Since the EPDP Phase 1 Final Report IS creating a consensus policy, it's obvious that **the Registrar WHOIS Server IS now a requirement going forward since the Final Report correctly lists the Registrar WHOIS Server as a requirement in the table for Recommendation 5**. Regarding the **deletion of the Administrative Contact, we note that implementing this change will violate the newly adopted NIS2 language which requires the collection of specific data** in Article 28, Section 2 including: ***"the contact email address and telephone number of the point of contact administering the domain name in the event that they are different from those of the registrant."*** As a result, **the Consensus Policy should also require the collection, transfer and disclosure of the Administrative Contacts." (BC)**	collect the following data element values: … Registrant Organization". The policy recommendation (Recommendation 5) allows the Registered Name Holder the option to provide a Registrant Organization value, which is subsequently how the policy language is drafted in section 6.1. Regarding the concerns for resellers, please see Section 2.4 above regarding the requirements to collect, transfer, and publish the reseller field. Regarding input on the WHOIS server field, the IPT acknowledges the concern to preserve the "Registrar WHOIS server", and confirms that the requirement to preserve this element remains within the RAA in the case RDAP in unforeseen circumstances were to fail. Lastly, regarding the input concerning the adoption of NIS2, the IPT provided its response above in Section 2.2 of the report.
6.3	"The "are to" language in **Recommendation 5 does not use MUST language**, so there is no binding policy language and **6.3 should be MAY.**" **(IPC)**	Regarding the requirements listed in section 6.3 of the draft Registration Data Policy, the IPT notes that the language in Recommendation 5 of the Final Report indicates an optional rather than a mandatory requirement. Although the word "MUST" is not explicitly mentioned, the policy language indicates that if provided, Registrars are expected ***"to advise** the Registered Name Holder at the time of registration that the Registered Name Holder is free to (1) designate the same person as the registrant (or its representative) as the technical contact; or (2) provide contact information which does not directly identify the technical contact person concerned."*

Section 8: Transfer of Registration Data to Data Escrow Providers		
8	"Section 8 does not accurately reflect the intent of the Registration Data Consensus Policy." **(IPC)**	The IPT is unable to consider this input as no alternative suggestion or explanation to supplement is provided.
Section 9: Publication of Domain Name Registration Data		
9.1.1	"As suggested in the definition section, the **GAC recommends clarifying that publicly available means accessible free of charge** The **proposed change is as follows**: 9.1.1 **'*In responses to RDDS queries, Registrar and Registry Operator MUST Publish* free of charge *the following data elements:*'" (GAC)**	The IPT acknowledges the suggestion to clarify that publicly available means "accessible free of charge", however EPDP Phase 1 team did not recommend the incorporation of such requirements in this Policy, this recommendation is beyond the scope of this implementation.
Section 11: Log Files		
11.1.2	**"11.1.2 should be MUST maintain log files to confirm relay of communications from requestor to tech email address**. Rec #13 explicitly says "and which shall contain confirmation that a relay of the communication between the requestor and the Registered Name Holder has occurred" Additionally, all of the **log file requirements should be amended to allow logging of information that is not Personal Information." (BC)**	The IPT emphasizes that based on its discussions and work with the IRT, the team made every effort to implement the draft policy language per the language in Recommendation 13. The IPT reiterates its explanation in the "Drafting Errors document", which clarifies that Recommendation 13 did not include requirements for logging communication with the Tech email. Rather, the recommendation requires establishing a mechanism to log the relay of communication with the tech email if registrars choose to log them and make them available for compliance purposes. As a result, the policy requirement includes the Tech email for logging only if it has been collected.
11.1.1-11.1.2	"As drafted, **11.1.1 and 11.1.2 are impossible for CPs to comply with in modern logging software.** The **redactions/removals called for** are overly burdensome in their redaction requirements to the point where they actually **conflict with the rest of the good logging requirements in Section 11.** It is almost understandable if contents must not be logged, but a **log that does not contain the sender or recipient would be useless to the community." (IPC)**	
Section 12: Retention of Registration Data		

12	"'Registrar MUST retain those data elements necessary for the purposes of the Transfer Dispute Resolution Policy for a period of no less than fifteen (15) months following end of Registrar's sponsorship of the registration or an inter-registrant (change of registrant) transfer of the registration.' The **GAC recommends reviewing this provision, which only sets a minimum (mandatory) retention period, whereas the requirement under the GDPR is to limit retention to the period necessary to fulfill the purpose of processing." (GAC)**	Based on its research, the IPT determined that the retention of Registration data needed for TDRP appears to be the longest minimum retention period among all the policy and contract retention periods. Additionally, the IPT notes that no restrictions prohibit data from being retained for more extended periods for processing activities that fall outside of ICANN requirements. Each contracted party is responsible for ensuring that its retention practices concerning this data are in compliance with their agreements with ICANN, this Consensus Policy, and applicable law. Regarding article 5 of the GDPR and data minimisation principles, the IPT clarifies that the retention period represents the minimum period identified for which this data must be retained for TDRP purposes. Beyond this minimum retention period, contracted parties must determine for themselves, taking into account the necessity for the data, applicable laws, and other factors an appropriate retention period if the data is retained beyond this required period.
12	**"Section 12 only sets a minimum retention period of no less than fifteen (15) months. The Provision should be further reviewed considering article 5 of the GPDR and data minimisation principles." (AFNIC)**	
3.3 Input suggesting Additional Concerns with the draft Policy language in Registration Data Policy		
Input Received		**Implementation Project Team Response**
Section 6: Collection of Registration Data		
6.3	**"6.3. The GAC finds this section unclear** as it **could imply** that under certain circumstances the **contact details of the technical contact may replace the contact details of the registrant.** The present **data policy should ensure that the contact details of both the registrant and the technical contact are collected." (GAC)**	The IPT notes the input regarding the collection of the registrant and technical contact details. The IPT will provide further clarification on how contact details of both registrants and technical contacts are collected in its "Educational Materials", which will be available once the Registration Data Policy is published.
6.5 - 6.6	"In such cases, **the GAC would benefit from further clarification as to which data elements SHOULD be used for each category of entities existing in registrar distribution channels. If data elements do not currently exist for such entities, the GAC would view it as constructive to create and incorporate within the Consensus Policy such elements.**	The IPT notes that it is unable to implement the suggestion to distinguish between data of legal and natural persons, as the EPDP Phase 2A policy recommendations were not assigned by the Board as part of the EPDP Phase 1 IRT scope. Additionally, the IPT clarifies that the EPDP Phase 2A team made a policy decision not to require the contracted parties to take different measures related to the data of legal persons which was approved by the GNSO Council and adopted by the Board.

	6.5 – 6.6: ***"If provided by the Registered Name Holder, Registrar MUST collect the following data element values".*** The GAC acknowledges that this wording stems from Recommendation 12 of EPDP Phase 1, however **the GAC reiterates that these data elements may change as a result of pending policy recommendations, particularly the approved Phase 2A recommendations**. **EPDP Phase 2A has required the functionality of distinguishing between legal and natural persons and the GAC believes that such distinction has not been taken into account in the present Draft Policy.** In particular, **data such as 'the registrant organisation', though not essential for registrants who are natural persons, should nevertheless be collected when the registrant is a legal person**. **This information can thus be optional for natural persons but should be mandatory for legal persons.** As the GAC has stressed on multiple occasions, **personal data protection regulations, including the GDPR, apply to the processing of personal data of natural persons and not legal persons.** Therefore, the **contracted parties should collect and make data of legal persons publicly available. Additional safeguards may be considered for the case where the email address of a legal person contains personal data, in which case a functional email address can be published instead." (GAC)**	
Section 9: Publication of Domain Name Registration Data		
9.1.1, 9.2.1, 9.2.6, 9.2.2.3 9.2.2.4	**"9.1.10 These MUST be published if present/provided.** **The first MUST in 9.2.1 should be MAY** - ICANN is in the business of enforcing policy requirements, not in the business of enforcing laws. **In the fourth line of 9.2.1, the word MAY conflicts with the word "requirements." A different word should be used ("options"?) since ICANN clearly does not intend these to be requirements. The 9.2.1(i) and (ii) carve outs are unacceptable. Each of (i) and (ii) would render this portion of the policy unenforceable as they would permit contracted parties sole discretion to do as they please**. Such an outcome would be unacceptable.	The IPT clarifies that as part of the EPDP deliberations to determine if the Temporary Specification complies with the GDPR, and as listed in the data element table in Recommendation 10, the EPDP Phase 1 team decided that Registrant Phone Ext, Registrant Fax, and Registrant Fax Ext data elements are not required to be published. Therefore, the suggested elements are included as a "MAY" provision because they are considered additional data elements not required for publication. The conditions stated in section 9.2.1 (i) and (ii) were necessary to make the requirement work for all Registrars and Registry Operators. The enforcement would include verifications of these conditions. Regarding the organization field, the IPT clarifies that the organization field is treated

	9.2.6 insufficiently captures this as it does not explicitly require the registrar to offer the option. **In Sections 9.2.2.3 and 9.2.2.4 - Registries should be required to publish if they have the Org and City data elements." (IPC)**	differently based on the requirements listed in the policy recommendation 12. Specifically, as drafted in Section 6.6 and implementation note D of the draft policy language, registrars must receive an agreement from the Registered Name Holder before publishing the data elements listed in the organization field.
9.2.1	**"Paragraph 9.2.1 allows the redaction of non Personal Data** contained in the Registration Data **if there is a "commercially reasonable," purpose to do so.** The fundamental purpose of the specification is to facilitate compliance with applicable privacy law. Whether redaction of non-personal data impacts a Registry Operator or Registrar's commercial business is beyond the scope of the process. More to the point, **the use of the broad term "commercially reasonable" without definition undermines the fundamental purpose of a specification by inserting significant ambiguity into the specification." (BC)**	The IPT clarifies that the term "commercially reasonable" is utilized in the draft Registration Data Policy as it is used in the policy recommendations. Since the term's definition is subjective and open to interpretation based on the perspectives and business models of registrars, the IPT refrained from providing a specific definition in the draft policy.
Addendum I		
Addendum I	**"Web-based lookups are required under the Registrar Accreditation Agreement." (BC)**	The IPT confirms that the web-based lookups are required in the Registrar Accreditation Agreement. Additionally, the IPT clarifies that the RDAP provisions regarding redaction are contained within the RDAP profile and are not excluded in Addendum I and II of the Registration Data Policy.
Addendum I	**"It seems this implicitly excludes RDAP(?), which doesn't make sense." (IPC)**	
Addendum II		
Addendum II	"As noted in previous comments from many parts of the community, **it would be irresponsible to allow Contracted Parties to delete Registrant Organization data.** This risks fundamentally and irreparably changing the entity responsible for domain name ownership, which is an unacceptable outcome." **(IPC)**	The IPT clarifies that the deletion of the registrant organization data is implemented as described in Recommendation 12 of the EPDP Final Report which was adopted by the Board following consultation with the GNSO Council and supported by the IRT.

Background		
Background	**"The final paragraph of the Draft Registration Data Policy should be completed before the Draft becomes Policy." (Tucows)**	The IPT will incorporate the Registration Data Policy publication date within the policy language prior to the draft becoming an ICANN Consensus Policy.
3.4 Input suggesting Policies and Procedures were Incorrectly Redlined		
Input Received		**Implementation Project Team Response**
AWIP	IPC suggested that the "redlines within the existing AWIP policy are incorrect" but did not elaborate further. **(IPC)**	Following further review, the IPT clarifies that the published version of the AWIP is based on IRT discussion and approval, however based on comments received the IPT incorporated additional updates to the AWIP for IRT review and discussion.
ERRP	"The recommended changes include **dropping the term "Registrant" and replacing with "Registered Name Holder."** This change **was not part of the recommendations** and this change **makes the policy inconsistent with prior policies that refer to "registrant".** This **policy should make clear that Registrant and "Registered Name Holder" are synonymous.**" **(BC)**	The IPT clarifies that the updates to the ERRP were made to consistently refer to "Registered Name Holder", rather than reference both Registered Name Holder and Registrant interchangeably. This is to ensure consistency with the Registration Data Policy, in line with Recommendation 27 and to avoid confusion caused by using different terminology to describe the same person/entity.
IGO & INGO Identifiers	"The **recommended changes** include **dropping the term "Registrant" and "domain name registrant**" and **replacing with "Registered Name Holder."** This change **was not part of the recommendations** and this change **makes the policy inconsistent with prior policies that refer to "registrant**". This policy should **make clear that Registrant, "Domain Name Registrant",** and **"Registered Name Holder" are synonymous.**" **(BC)**	The IPT clarifies that the redlines to the protection of IGO & INGO were made to consistently refer to "Registered Name Holder", rather than reference both Registered Name Holder and Registrant interchangeably. This is to ensure consistency with the Registration Data Policy, in line with Recommendation 27 and avoid confusion caused by using different terminology to describe the same person/entity.
CL&D	"The **requirement for maintaining a WHOIS lookup web based service on the contracted parties website's should not be eliminated.** See the BC's comments to the RDAP implementation posted at https://www.icann.org/en/public-comment/proceeding/proposed-a	The IPT clarifies that the updates made to the CL&D policy do not eliminate, but alternatively separate, the requirements for a WHOIS lookup web based service. Specifically noting: ● "Section 1 of this policy details technology-agnostic requirements that apply to all Registration Data Directory Services.

	mendments-to-the-base-gtld-ra-and-raa-to-add-rdap-contract-obligations-06-09-2022/submissions/icann-business-constituency-bc-16-11-2022" **(BC)**	• *Section 2 of this policy details implementation requirements pertaining to WHOIS (available via port 43) and web-based Whois directory services only."*
Transfer FOA Rr	"The EPDP P**hase 1 Policy did not authorize these changes:** - The **change of "registrant" to "registered name holder."** - The **deletion of " in the event of a dispute the Registered Name Holder's authority supersedes the administrative contact's authority"** - **Footnote 1** which **incorrectly attempts to define "Registered Name Holder"** This **definition is inconsistent with RAA Section 1.16** where it states that "Registered Name Holder" means the holder of a Registered Name. The **IRT did not have authority to redefine definitions in the RAA**. - **Elimination of** the **"Transfer Contact" throughout.** - **Elimination of the Form of Authorization.** Indeed they create security risks since Forms of Authorizations (FOA) were intended to make transfers more secure by preventing domain name hijacking. When DPAs are implemented and more contact information is available (such as when NIS2 requirements apply to the data of legal persons and/or natural person registrants consent to the publication of their information), **the FOAs should be required rather than eliminated.** - **Addition of** the "**where required pursuant to Section I.A.2."** throughout, such as in Section 2.2.1., 2.2.4, 4.1, 4.3 - Registrant Transfers- **Deletion of 1.1.4 in Section II.A.** Instead - **technical contact should be substituted for the administrative contac**t. **These changes are not necessary to implement the Phase 1 Policy and should be deleted.** In addition, **more work is needed to determine whether it would be more appropriate to substitute the "technical contact" for the "administrative contact" in the transfer policy** since there may be instances where the technical contact may be more closely aligned with what was formerly the administrative contact. Indeed, this creates a security risk when there are multiple contacts (registrant and tech contact), and the registrant is unresponsive or goes out of business. Examples of where this might arise could be situations where the reseller or privacy/ proxy service is the registrant, and the technical contact is the customer of the reseller, privacy/proxy	The IPT would like to clarify that the updates to the Transfer FOA Confirmation are consistent with the requirements specified in EPDP Phase 1 policy recommendations and do not aim to redefine terms or eliminate requirements. Specifically, Recommendation 27 requires updates to policies and procedures that refer to data elements no longer required by the EPDP Phase 1 policy recommendations, such as administrative and/or technical contact. The Registration Data Policy eliminates the administrative contact, eliminating the Transfer Contact as defined/described in the Transfer Policy. As the only remaining authorized contact is the RNH, the term "registrant" was eliminated to avoid confusion and duplication of definitions. Furthermore, the FOA requirements are not eliminated through the updates but rather references the Board deferral of compliance enforcement of the Gaining FOA requirement. Lastly, the IPT encourages the BC to actively participate in the ongoing Transfer PDP WG deliberations to consider further concerns regarding the technical and administrative contact within the Transfer policy.

	service. This is especially important when more registrations reflect registrant information that apply to resellers or privacy/proxy providers. Instead, **the policy should replace "administrative contact" with "technical contact" to have an additional way of enabling the transfer." (BC)**	
Transfer FOA initial auth.	"The EPDP **Phase 1 Report did not authorize these changes**: - The **elimination of a second form of authorization in the FOA.** As a result, **the policy should reflect "technical contact" in lieu of "administrative contact" throughou**t. - **The elimination of a reference to a "WHOIS database"**. The changes assume that there are no contacts in the RDS database that are public, yet **ICANN policy** clearly **requires contacts to be published when the registrant consents,** and there **may be legal requirements such as NIS2** where the data of legal persons is required to be published. These **changes are not necessary to implement the Phase 1 Policy and should be deleted." (BC)**	As previously noted, the updates to the Transfer FOA initial authorization and TDRP were carefully reviewed and remain consistent with requirements specified in EPDP Phase 1 policy recommendations. The updates eliminate the FOA requirements and only reference the Board deferral of compliance enforcement of the Gaining FOA requirement. Additionally, the IPT notes that the public WHOIS database does not define the RNH, therefore the entity to whom the FOA should be sent should not be defined in the public database. Finally, the IPT is unable to substitute the technical contact for the administrative contact as it is not part of the EPDP Phase 1 policy recommendations.
TDRP	"The EPDP **Phase 1 Policy did not authorize these changes: - The change of "registrant" to "registered name holder."** - **Elimination of the "Transfer Contact" throughout**. - **Elimination of the Form of Authorization**. Indeed they create security risks since Forms of Authorizations (FOA) were intended to make transfers more secure by preventing domain name hijacking. **When DPAs are implemented and more contact information is available** (such as when NIS2 requirements apply to the data of legal persons and/or natural person registrants consent to the publication of their information), **the FOAs should be required rather than eliminated.** - **The deletion of a duplicate form of authorization** - **instead of eliminating the "administrative contact " throughout, it should be replaced with the technical contact**. These **changes are not necessary to implement the Phase 1 Policy and should be deleted**. See above for explanation for why these changes are inappropriate." **(BC)**	

Transfer Policy	"The EPDP Phase **1 Policy did not authorize these changes:** - **The change of "registrant" to "registered name holder."** - The **deletion of " in the event of a dispute the Registered Name Holder's authority supersedes the administrative contact's authority"** - **Footnote 1** which **incorrectly** attempts to **define "Registered Name Holder"** This **definition is inconsistent with RAA Section 1.16** where it states that "Registered Name Holder" means the holder of a Registered Name. The **IRT did not have authority to redefine definitions in the RAA**. - **Elimination of the "Transfer Contact" throughout.** - The **requirement of a "secure method of transfer" in Section 2.2.1 before any registration data can be transferred**. No secure method of transfer is needed for information that is publicly available. When DPAs are implemented and more contact information is available (such as when NIS2 requirements apply to the data of legal persons and/or natural person registrants consent to the publication of their information), this information can be shared without further restrictions as imposed by proposed implementation. - **Elimination of the Form of Authorization.** Indeed they create security risks since Forms of Authorizations (FOA) were intended to make transfers more secure by preventing domain name hijacking. When DPAs are implemented and more contact information is available (such as when NIS2 requirements apply to the data of legal persons and/or natural person registrants consent to the publication of their information), **the FOAs should be required rather than eliminated.** - **Addition of the "where required pursuant to Section I.A.2." throughout**, such as in Section 2.2.1., 2.2.4, 4.1, 4.3 - **Registrant Transfers- Deletion of 1.1.4 in Section II.A. Instead - technical contact should be substituted for the administrative contact**.- **The language regarding "best practices" for generating AuthCodes should be strengthened to require the generation of AuthCodes, with the "best practices" to apply to how they are transmitted**. These **changes are not necessary** to implement the Phase 1 Policy and **should be deleted**. In addition, **more work is needed to determine whether it would be more appropriate to substitute the "technical contact" for the**	The updates to the Transfer Policy were carefully reviewed and remain consistent with requirements specified in EPDP Phase 1 policy recommendations. The updates do not redefine terms or eliminate requirements, but rather update impacted policies and procedures as recommended by Recommendation 27. As a result, the administrative and transfer contacts were eliminated, making the remaining authorized contact the RNH. The IPT incorporated these updates to avoid confusion and duplication of definitions. Regarding the FOA, the IPT clarifies that requirements were not eliminated through the redlines and only reference the Board deferral of compliance enforcement of the Gaining FOA requirement. The IPT notes that the public WHOIS database does not define the RNH, so the entity to whom the FOA should be sent should not be defined in the public database. Finally, the IPT notes that the AuthInfo code must be provided to the RNH per Section 5.2 of the Transfer Policy. The IPT encourages the BC to provide any further feedback or concerns to the chair of the RDAP working group.

	"administrative contact" in the transfer policy since there may be instances where the technical contact may be more closely aligned with what was formerly the administrative contact. Indeed, this creates a security risk when there are multiple contacts (registrant and tech contact), and the registrant is unresponsive or goes out of business. Examples of where this might arise could be situations where the reseller or privacy/ proxy service is the registrant, and the technical contact is the customer of the reseller, privacy/proxy service. This is especially important when more registrations reflect registrant information that apply to resellers or privacy/proxy providers. Instead, t**he policy should replace "administrative contact" with "technical contact" to have an additional way of enabling the transfer." (BC)**	
UDRP Policy	"The EPDP **Phase 1 Report did not authorize these changes: - The elimination of a reference to a "WHOIS database".** The changes assume that there are no contacts in the RDS database that are public, yet **ICANN policy clearly requires contacts to be published when the registrant consen**ts, and there may be legal requirements such as NIS2 where the data of legal persons is required to be published. - **Footnote 1 should be deleted since there is no reason to replace "WHOIS database" with Registration Data**. These **changes are not necessary** to implement the Phase 1 Policy and **should be deleted." (BC)**	The IPT clarifies that reference to "WHOIS database" was removed to ensure the UDRP policy remains technology agnostic.
UDRP Rules	"The EPDP **Phase 1 Report did not authorize these changes:** - **The elimination of a reference to a "WHOIS database"**. The changes assume that there are no contacts in the RDS database that are public, yet ICANN policy clearly requires contacts to be published when the registrant consents, and there may be legal requirements such as NIS2 where the data of legal persons is required to be published. - **Footnote 1 should be deleted since there is no reason to replace "WHOIS database" with Registration Data.** - In Section 2(a)(2) - the **insertion of *"Registration Data Directory Service***	The IPT clarifies that reference to "WHOIS database" was removed to ensure the UDRP Rules policy remains technology-agnostic. Regarding the addition of *"Registration Data Directory Service (hereinafter "RDDS")*", the IPT notes Registration Data is defined in the draft policy and was incorporated into the UDRP rules based on the capitalized definition of "Registration Data Policy" which concerns data elements collected or generated in conjunction with Section 6 of the draft policy.

	***(hereinafter "RDDS") or in the Registration Data provided by the Registrar or Registry Operator when the Registration Data is redacted in the RDDS*" is not needed.** When there is a Redacted Contact in the public RDDS queries, the unredacted RDDS would still be available to be provided under the Rules. This change implies that the Registrar can list other data (such as customer data) beyond the unredacted information - which is clearly not possible. These **changes are not necessary** to implement the Phase 1 Policy and **should be deleted." (BC)**	
URS Rules	"**Section 4 should replace the new 'Registration Data' with 'RDDS'" (BC)**	The IPT kindly refers to section 3.6 of the draft Registration Data Policy which defines the use of "Registration Data" as data elements that are generated or collected. Additionally, Section 4 of the URS Rules considers the country or territory of both Registration Data or RDDS to be the same due to the identical publication requirements for the data elements.
WDRP Rules	The EPDP **Phase 1 Policy did not authorize these changes**: - **The change of "registrant" to "registered name holder" throughout.** - In the first paragraph the **replacement of "Registration Data" is incorrect** since Registration Data includes information that is not generated by the Registrant. - The **deletion of the requirement to send the notice to a duplicate contact** - **instead of eliminating the "administrative contact " throughout, it should be replaced with the technical contact.** More **work is needed to determine whether it would be more appropriate to substitute the "technical contact" for the "administrative contact" in the WHOIS Data Reminder Policy** since there may be instances where the technical contact may be more closely aligned with what was formerly the administrative contact. Indeed, this creates a security risk when there are multiple contacts (registrant and tech contact), and the registrant is unresponsive or goes out of business. Examples of where this might arise could be situations where the reseller or privacy/ proxy service is the registrant, and the technical contact is the customer of the reseller, privacy/proxy service. This is especially important when more registrations reflect registrant information that apply to resellers or	The IPT clarifies that Registration Data includes generated items such as creation date and expiration date and is not limited to data collected from the RNH. The draft Registration Data Policy eliminates the administrative and transfer contacts, subsequently making the authorized contact the RNH. The IPT incorporated these updates as required in Recommendation 27 to mitigate against confusion and duplication of definitions. Lastly, the term "WHOIS data" was replaced as WHOIS data includes information that is collected or generated.

	privacy/proxy providers. Instead, the **policy should replace "administrative contact" with "technical contact" to have an additional way of ensuring that the information provided is accurate." (BC)**	
RDAP Guide	"As stated above the BC believes that **Web-based lookups must continue to be required under the Registrar Accreditation Agreement**. An obligation to only respond to RDAP queries using a non-human readable/parsable network protocol is insufficient to ensure Internet users have access to Registration Data as required by the ICANN bylaws." **(BC)**	The IPT clarifies that web based lookup requirements were not eliminated and the draft RDAP guide is written to ensure the draft policy remains technology-agnostic. The IPT encourages the BC to review the Public Comment Summary Report for the Proposed Amendments to the Base gTLD RA and RAA to Add RDAP Contract Obligations for further clarification.
RDAP Profile	"As stated above the BC believes that **Web-based lookups must continue to be required under the Registrar Accreditation Agreement.** An obligation to only respond to RDAP queries using a non-human readable/parsable network protocol is insufficient to ensure Internet users have access to Registration Data as required by the ICANN bylaws. **Attachment:** BC Comment on Draft policy for gTLD Registration data.pdf (209.17 KB) **Summary of Attachment:** The attached PDF is in lieu of completing this form, since the attachment includes formatting that should assist readers in identifying line breaks, lists, text excerpts, strike-throughs, etc. **Summary of Submission:** The final NIS2 text was adopted by the European Parliament on 10-Nov-2022. The BC and other members of the EPDP frequently cited pending NIS2 regulation in our advice to create evolution mechanisms for registrant data policy. Unfortunately, the EPDP Working Group and GNSO Council did not follow that advice. **NIS2 now requires** EU Member States to enact **regulation that may render some EPDP policy recommendations in conflict with law.** Specifically, **NIS2 requirements to publish registrant data for legal persons, requirements to maintain accurate registrant data, and potentially requirements for registries to maintain registrant data (i.e. Thick Whois)**. The BC therefore **recommends that implementation of EPDP Phase 1 and Phase 2 be**	

	reassessed after the first EU Member State implements regulations pursuant to NIS2." (BC)	
3.5 General Comments		
Input Received		**Implementation Project Team Response**
2 & 10	"In **Section 10, the recommendations are indefinite as to the responsibilities of the contracted parties in evaluating requests for access to information.** Further, **the recommended response times are unduly long and burdensome on the requestor who endeavors to act quickly on suspected cases of abuse. INTA requests that the drafters of the policy reconsider these sections based on INTA's specific observations so that the system will be consistent, predictable and more user friendly." (INTA)**	The IPT clarifies that the scope of the Registration Data Policy is strictly limited to processes and does not provide criteria or requirements on how contracted parties determine whether to disclose data or not. Additionally, the IPT confirms that the draft policy language was implemented in line with Recommendation 18 which requires *"Response time for a response to the requestor will occur without undue delay, but within maximum of 30 days".*
	"We welcome the work of ICANN to release the document in line with Workstream 2 Recommendations on ICANN Transparency. Our analysis shows that, primarily, the document is a good first step **but has fundamental gaps in ensuring the full implementation of Section 27.2 of the ICANN Bylaws (on Human Rights) and other Bylaws with an impact on human rights.** CCWP-HR, therefore, urges ICANN to implement the recommendations below, which would ensure that the Draft Registration Data Policy is implemented more closely with international law and best practice." **Comments on the lack of clear timelines** **The draft policy states that the effective date of the policy shall be "no later than [540 days after the date of policy announcement and legal notice for implementation]**". However, the call for Public Comment that accompanies the draft Policy states: **"after the implementation plan has been finalized, ICANN's Contracted Parties will be notified of the implementation and compliance deadlines."** We recommend that the language in both documents **be**	**Input regarding the lack of clear timelines** The IPT clarifies that the effective date will be published after finalization of policy language, and an exact publication date cannot be determined until all comments have been considered that could impact policy requirements. Thus, until this Policy's effective date, the requirements in the Temporary Specification for gTLD Registration Data, applicable via the Interim Registration Data Policy, will continue to apply. The IPT further clarifies that the Temporary Specification was adopted by the ICANN Board to provide "modifications to existing requirements in the Registrar Accreditation and Registry Agreements to bring them into compliance with the European Union's General Data Protection Regulation (GDPR)." **Input on the Requirements for Data Protection Agreements** The IPT notes the comment that the requirement should be "made more robust to additionally include mandates on ICANN, gTLD registry operators and accredited registrars to conduct full human rights impact assessments (HRIAs) or data protection impact assessments (DPIAs), carried out by independent experts, within one year after the compliance deadline and at least every two years thereafter." Because the EPDP Phase 1 team did not recommend the incorporation of such requirements in this Policy, this suggestion is beyond the scope of this implementation.

	changed to either specify an exact date or ensure that the language is consistent, so that all stakeholders have clarity and legal certainty. Given that the draft policy aims to further enhance the privacy of registrants, we recommend that the deadline for compliance be made as soon as practicable (preferably within the first 6 months), as any further delay in securing the rights to privacy of registrants puts their data at risk." **Comments on the requirements for Data Protection Agreements** We welcome the requirement that "ICANN, gTLD Registry Operators, and accredited Registrars MUST enter into required data protection agreements with each other and with relevant third party providers contemplated under this Policy where applicable law requires. The terms may include legal bases for processing Registration Data." **We recommend that the requirement be made more robust to additionally include mandates on ICANN, gTLD registry operators and accredited registrars to conduct full human rights impact assessments (HRIAs) or data protection impact assessments (DPIAs), carried out by independent experts, within one year after the compliance deadline and at least every two years thereafter.** HRIAs and DPIAs are activities that include engaging in consultation with both internal and external stakeholders of an entity. This is done so that the entity can accurately determine the potential and actual effects of their corporate policies, practices, products, and services on human rights and data protection, respectively, and then take steps to lessen the effects of any adverse effects. The HRIA has been acknowledged by ICANN itself as a methodology through which it can comply with its commitments as outlined in Section 27.2 of the ICANN Bylaws (on human rights) as well as in the Framework Of Interpretation for Human Rights (FOI-HR). Under the United Nations Guiding Principles (UNGPs) on Business and Human Rights, companies including ICANN, gTLD registry operators and accredited registrars are responsible for respecting the human rights of their stakeholders and customers. Conducting HRIAs and DPIAs will ensure that these companies are not only in compliance with	**Input regarding the Collection of Registration Data** The IPT notes that the EPDP Phase 1 team did not recommend the incorporation of the suggested requirements in this policy, thus the recommendation to obtain "express" consent from the registrant prior to collection and informing registrants of what data is or is not required within this policy is beyond the scope of this implementation. The IPT would also like to note that section 3.7 of the Registrar Accreditation Agreement already requires the Registrar to obtain consent from the registrant and inform them of which data is required. **Input regarding the deletion of the Admin contact** The IPT notes that the recommendation to make the deletion of the administrative contact mandatory is beyond the scope of this implementation as the EPDP Phase 1 team did not include this requirement in this Policy. However the IPT references implementation note A of this Policy, which "does not prohibit Registries or Registrars from processing data for purposes beyond the scope of this policy." **Input regarding Disclosure Requests Independent mechanism** The IPT clarifies that during the policy development phase, the EPDP Phase 1 team recommended a timeline and criteria for registrars' and registry operators' response to requests for data access, but did not recommend any specific processes the contracted parties must follow in evaluating a request for access and, if applicable, disclosing the requested data (which might, or might not, include notification of the registrant). As such, this issue is beyond the scope of the EPDP Phase 1 policy, though the contracted parties may have additional requirements in this area pursuant to local law. Please note that this issue was considered in greater depth by the EPDP Phase 2 team.

	international human rights standards and principles, but also with their national and regional obligations, such as those under the European Union General Data Protection Regulations (GDPR). **Comments on the requirements for Collection of Registration Data** Under **Section 6.7 and the Implementation Notes of the draft policy, there is leeway for gTLD registry operators, and accredited registrars to a) collect data in addition to the data provided for under the draft policy and b) process data for purposes that are beyond the scope of this draft policy.** We recommend **that these sections be redrafted to require ICANN registries and gTLD registry operators to a) obtain the express consent of Registrants before the collection of data and b) clearly inform registrants of what data is required and not required to be collected under this draft policy, prior to obtaining registrant consent to collection.** **Comments on the requirements for deletion of administrative contact data** We welcome the recommendation, which allows gTLD registry operators and accredited registrars to **delete administrative contact data** that was collected prior to the publication of the draft Data Consensus Policy but note that the **drafting makes it optional by the use of "MAY" instead of "MUST". We therefore recommend that this be redrafted to make it mandatory, unless the express, informed consent of the Registrant is provided or in the case of ongoing law enforcement processes at the time of the policy's publicatio**n **Comments on Disclosure Requests.** We welcome this section, as it requires that, when providing responses to disclosure requests, gTLD registry operators and accredited registrars' responses must provide an explanation of how the fundamental rights and freedoms of the data subject were weighed against the legitimate interest of the requestor (if applicable). **However, this provision applies as a response to a third-party requester for data and does not clearly allow for the**	

	involvement of registrants in decisions involving their data. The lack of provisions for notifying registrants when requests to access their registration data are made undermines their ability to challenge these requests. As such, this mechanism does not adequately balance the needs of a third-party requester for access to information with registrants' rights to privacy and data protection. To ensure compliance with the principles of necessity, proportionality, and the requirement for due process under the international human rights framework, we advise that users and registrants be provided with an independent mechanism to appeal requests before their registration data is disclosed to third-party requesters." (CCWP-HR)	