

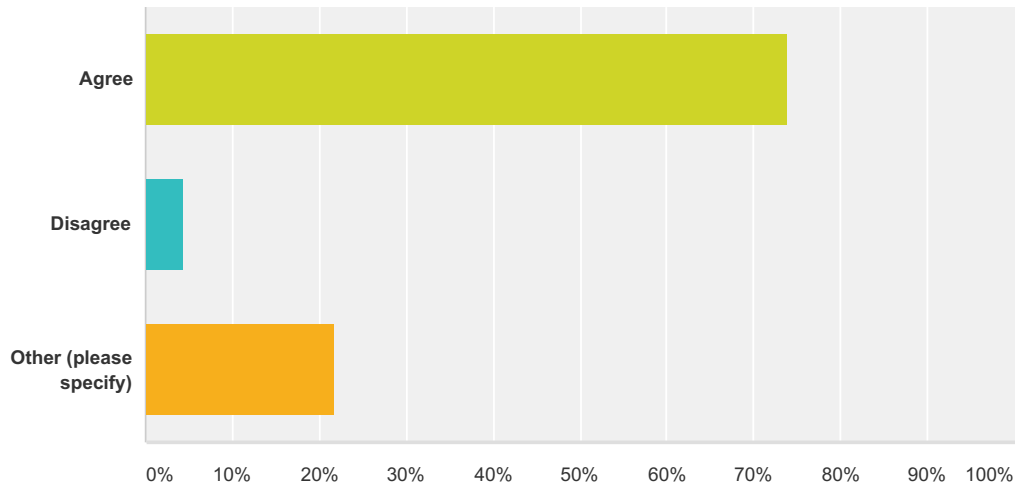
Q1 Your name (must be a RDS PDP WG Member, not Observer, to participate)

Answered: 24 Skipped: 0

#	Responses	Date
1	Tim OBrien	4/16/2017 1:09 AM
2	Greg Shatan	4/15/2017 11:35 PM
3	Steve Metalitz	4/15/2017 2:56 PM
4	Roger Carney	4/15/2017 7:13 AM
5	Vicky Sheckler	4/15/2017 5:07 AM
6	Juan Manuel Rojas	4/14/2017 10:28 PM
7	Michael Haffely	4/14/2017 6:41 PM
8	Alex Deacon	4/14/2017 2:55 PM
9	Susan Prosser	4/14/2017 11:24 AM
10	Sam Lanfranco	4/14/2017 11:15 AM
11	Farell FOLLY	4/14/2017 9:15 AM
12	Nathalie Coupet	4/13/2017 1:36 PM
13	Marc Anderson	4/13/2017 11:51 AM
14	Patrick Lenihan	4/13/2017 5:24 AM
15	Carlton Samuels	4/12/2017 4:29 PM
16	Jeremy Malcolm	4/12/2017 11:12 AM
17	Susan Kawaguchi	4/12/2017 11:08 AM
18	Scott Hollenbeck	4/12/2017 6:35 AM
19	Maxim Alzoba	4/12/2017 4:34 AM
20	Theo Geurts	4/12/2017 4:16 AM
21	Volker Greimann	4/12/2017 2:07 AM
22	Daniel K. Nanghaka	4/12/2017 1:06 AM
23	Rod Rasmussen	4/11/2017 11:03 PM
24	Chuck Gomes	4/11/2017 9:08 PM

Q2 Purposes for the Domain Name registration data element During our 11 April meeting, WG members agreed with the following statement; there were no objections voiced by those on the call. The domain name will be necessary for every legitimate purpose. Please indicate below whether you agree or disagree with this statement.

Answered: 23 Skipped: 1



Answer Choices	Responses
Agree	73.91% 17
Disagree	4.35% 1
Other (please specify)	21.74% 5
Total	23

#	Other (please specify)	Date
1	I'm not clear what this means, or how it will be applied. Does this relate to collection, access/disclosure or both? Does it mean that it is appropriate to include the domain name in any disclosure for a legitimate purpose? Or does it mean that a purpose will not be legitimate unless the domain name is "necessary" for that purpose?	4/15/2017 11:35 PM
2	Agree, though absolute statements can be dangerous	4/15/2017 7:13 AM
3	Don't understand the statement	4/12/2017 11:12 AM
4	I might miss the point, but to me it looks like - every legitimate purpose requires a domain name. I agree with the idea of the domain names in registration to be used preferably for legitimate purposes, but I am not sure in this particular (suggested) wording.	4/12/2017 4:34 AM
5	Where the domain name will be used within the RDS remains to be seen. I am sure we need it, but not on a non restricted level for sure.	4/12/2017 4:16 AM

Q3 Purpose: Question #1The first question posed by the RDS PDP WG to privacy experts asked:“Can you please help us understand what the data protection supervisors have meant over the years when they have told ICANN to specify the purpose of WHOIS?” and “How would you assess the purpose of collecting gTLD registration data?” The draft answer provided to this question was:“Purpose has to be defined in advance of the data processing. Purposes have to have a legitimate aim and the processing has to be necessary and proportionate to the legitimate aim pursued. Translating this to ICANN means the WG would want to take a look into ICANN role and its mission statement and separate out the legitimate data processing purposes, and determine which data are necessary for which purpose. It is to be underlined that the compatibility of the processing to the original legitimate purpose should be also looked into at this point. You have also to bear in mind that according to all existing legal texts, the data controller has to be accountable for the data processing and that the purpose of the WHOIS directories cannot be extended to other purposes just because they are considered desirable by some potential users of the directories.To illustrate it with an example if ICANN determines that it has a role in cyber-security ,it will become accountable for these kinds of data processing (meaning accuracy of data, handling complaints, providing subject access etc...) but cannot give out data just because law enforcement authorities may find it useful. ICANN has to define the legitimate purposes for the data processing, and secondly, determine what data may legitimately be processed for what

purpose. As data protection experts, we have repeatedly pointed out that ICANN should create layered access to the gTLD registration data."

Answered: 21 Skipped: 3

Answer Choices	Responses
a) What (if any) possible key concepts for RDS do you see in this answer?	100.00% 21
b) What (if any) follow-up questions do you suggest to seek clarification?	90.48% 19

#	a) What (if any) possible key concepts for RDS do you see in this answer?	Date
1	Possible key concepts could include: (1) there can be multiple legitimate purposes for processing RDS data; (2) different data elements can legitimately be processed for different purposes, (3) that ICANN's Mission, Commitments and Core Values can provide a basis for legitimate purposes, (4) the Mission, Commitments and Core Values could be "mined" to provide ideas for legitimate purposes, (5) that the purposes of the WHOIS directories needs to be fleshed out so that legitimate purposes for the WHOIS data can be understood and catalogued, (5) that there appears to be a certain animosity, or at least wariness, towards law enforcement authorities and a feeling that requests made by law enforcement authorities somehow lack gravity and necessity ("just because law enforcement authorities may find it useful" is pretty dismissive language).	4/15/2017 11:35 PM
2	(1) There may be multiple legitimate purposes for processing RDS data. (2) Different data elements may legitimately be processed for different purposes.	4/15/2017 2:56 PM
3	Something that came up on the call Tuesday was the idea that if there is a single purpose for a data element then we move on, several of us suggested that multiple purposes would afford for purposes becoming invalid or no longer appropriate. Additionally, according to this, it is suggesting that we need to define all the purposes that we see that we want to account for: "compatibility of processing". If we were to state Domain Name is needed for Domain Name Control only, then we would not be able to use it for Technical Issue Resolution.	4/15/2017 7:13 AM
4	there may be a best practice in clarifying various purposes for use of personally identifying information	4/15/2017 5:07 AM
5	data processing, users of the directories	4/14/2017 10:28 PM
6	ICANN has chosen to overstep its boundaries	4/14/2017 6:41 PM
7	The relevant key concepts outlined above is that there indeed can be multiple legitimate purposes for RDS data.	4/14/2017 2:55 PM
8	This may be completely off the map, but I am beginning to wonder what, if any data ICANN itself has a legitimate purpose to collect. ICANN only exists as a California corporation. For every domain name registration ICANN knows who the registry is, and the registry knows who the registrar is. The registry has legal residence somewhere, and will likely come under national laws. The registrar's may have legal residences in various locations, and exist under various national law regimes. The registrar's will collect what they need to do their business. In different jurisdictions what is collected, and the terms of access, might be dictated by national law. Other than giving advice about good business practices, why is ICANN involved at this level at all?	4/14/2017 11:15 AM
9	Nothing new that will make us reconsider what we are currently focusing on. We are already on the good way	4/14/2017 9:15 AM
10	Layered access to gTLD registration data	4/13/2017 1:36 PM
11	Personally I find this response useful in considering how we draft the RDS purpose statements. I'm not sure I would say there is a "key concept" for RDS so much as to say this is a useful guideline in helping the working group draft a purpose statement that will stand up to scrutiny.	4/13/2017 11:51 AM
12	We are trying to create a gate-keeping apparatus. The key concept is: Who will have access to which layers of information, and for what legitimate purposes?	4/13/2017 5:24 AM
13	Purpose must fall within the ICANN remit; Every processing of data must be legitimate and the purpose for processing must also be legitimate	4/12/2017 4:29 PM
14	Legitimate purposes must be defined	4/12/2017 11:08 AM
15	The need for layered/gated access is clearly articulated. I believe it also identifies a need to distinguish between purpose for collection/derivation and purpose for display.	4/12/2017 6:35 AM

RDS PDP WG Poll - 11 April

16	I suggest adding flag of "Personal data"/"no personal data"/"questionable" (and add latest to all imported records[from the old system], until resolved), so it might allow RDS to separate personal data and even potentially store to according to the requirements (even localisation) of such regulators (EU is not the only source of such challenges).	4/12/2017 4:34 AM
17	The key take away here is, what is the purpose? I think we can learn a lot from the vehicle database that many EU countries offer. The license plate allows you to search the database and you get information that serves a legitimate purpose. This WG needs to incorporate privacy by design and privacy by default. If we take that as a starting point only then you can ask the question, what is the purpose? This is not an easy excersice, many EU based companies small or large been working on this for over a decade, they did not get it right from the start. Another key take way from the answer for question 1 is. The more data you collect the more responsibility you carry, ie the more you collect the more you have to do to protect it. In addition to this, the answer clearly indicates that the WHOIS is a "nice to have", but not a "must have". So we need to reconsider if we are on the right path for RDS, wich based on the input provided in question 1 it will be more like an ultra thin WHOIS. Perhaps we should turn this entire process around and ask ourselves the question what are our biggest real problems. That is abuse in the broadest sense of the word. Can RDS assist there and how? We can continue this process, and ask do we need WHOIS for transfers? Etc.	4/12/2017 4:16 AM
18	The purpose of data collection has to directly be derived from the role of ICANN and its mission. Any purpose not following directly from those is not sufficient to justify the collection. Beyond collection, processing must be as limited and narrowly tailored as possbile.	4/12/2017 2:07 AM
19	Data controllers reserve the right to data and information should not be granted to third parties in this case which enhances privacy protection.	4/12/2017 1:06 AM
20	Gated access, accreditation of data requestors, specific purposes for collection and display of data.	4/11/2017 11:03 PM
21	1) Purpose has to be defined in advance of the data processing. 2) Purposes have to have a legitimate aim. 3) processing has to be necessary and proportionate to the legitimate aim pursued. 4) determine which data are necessary for which purpose. 5) the data controller has to be accountable for the data processing. 6) the purpose of the WHOIS directories cannot be extended to other purposes just because they are considered desirable by some potential users of the directories.	4/11/2017 9:08 PM
#	b) What (if any) follow-up questions do you suggest to seek clarification?	Date
1	The mention of "layered access" appears to be gratuitous and not responsive to the question. I would be curious why the data protection supervisors chose to stick this point in here. Obviously, pushing this point is part of their agenda, but I fail to see how it responds to the questions. How does ICANN determined whether or not a defined purpose "has a legitimate aim"? How is "legitimacy" defined and quantified in this context? Assuming RDS data is neither collected or processed by ICANN, do the supervisors somehow believe ICANN is nonetheless a "data controller"? If so, why? If not, how is the ICANN "role and mission statement" relevant? It appears that the author(s) still need to "consult the data protection experts who took part in the "Privacy Day at ICANN 58" event" and thus will be provided later. Does this mean that all of those who appeared on the panel (including the moderator) will be consulted? If any panelists will not be consulted, why not? Which panelists were already consulted in preparing these answers? Does the author believe that certain of the panelists do not qualify as "data protection experts"? If not, why not? Does the author believe that only the data protection supervisors are "data protection experts"?	4/15/2017 11:35 PM
2	(1) How is it determined whether a defined purpose "has a legitimate aim"? What is the measure of "legitimacy" in this context? (2) To the extent that RDS data is neither collected by nor otherwise processed by ICANN, what is the relevance of the ICANN "role and mission statement"? (3) Please explain the basis for your conclusion that "ICANN should create layered access to the gTLD registration data." If ICANN did so, would this bring it into compliance with data protection principles, in your view? (4) The marginal comment indicates that responses to several questions require the author to "consult the data protection experts who took part in the "Privacy Day at ICANN 58" event" and thus will be provided later. Were these other panelists consulted in the preparation of the responses already provided?	4/15/2017 2:56 PM
3	how does the above answer conflict and/or work with other various EU and state laws and judicial decisions, including those that require transparency and/or acknowledge implied legitimate purposes, such as for network security	4/15/2017 5:07 AM
4	legitimate purposes for data processing?	4/14/2017 10:28 PM
5	Why does ICANN seek to move away from the precepts and guiding principles that made the internet work well?	4/14/2017 6:41 PM
6	Can we confirm that "layered access" means "gated or authenticated access"? Also i'd like to further clarify the statement made regarding "cannot give out data just because law enforcement authorities may find it useful". Lets pretend that ICANN does in fact determine that it has a role in law enforcement, and assisting law enforcement authorities. Could one then argue that ICANN could indeed give out data because law enforcement authorities find it useful?	4/14/2017 2:55 PM

RDS PDP WG Poll - 11 April

7	At its core with regard to this question, the only real role ICANN plays is determining which single entity has to right to approve unique domain names for a particular gTLD. Question: Why doesn't it just figure out what minimum data it needs from registries and keep out of the rest of the data issues? Minimum data might just be: How many are registered?...and send us our cheque	4/14/2017 11:15 AM
8	N/A	4/14/2017 9:15 AM
9	Is the exclusion of certain stakeholders from the WG forbidden in order to achieve consensus on a substantial issue?	4/13/2017 1:36 PM
10	n/a	4/13/2017 11:51 AM
11	How do we define "legitimate purposes?"	4/13/2017 5:24 AM
12	Access to gTLD registration data may not be open to all but could and should be based on permissible purposes	4/12/2017 4:29 PM
13	Definition of processing	4/12/2017 11:08 AM
14	I would like to better understand how they see the different layers of data access. What do they think should be freely available for all query purposes, and what factors should be considered in determining the different layers?	4/12/2017 6:35 AM
15	Could we have more in-depth overview of layered access suggestions? (now many layers, what are excusable reasons to access each?) this needs to cover LEA requests.	4/12/2017 4:34 AM
16	No follow up needed, this is crystal clear.	4/12/2017 4:16 AM
17	Once we have defined a list of purposes and how they flow from the role and mission of ICANN, we should ask if these purposes would be deemed sufficient to ensure data collection and processing are in compliance with the law.	4/12/2017 2:07 AM
18	You specify LE access to data as being not-allowed, yet in most jurisdictions worldwide, property records are routinely access by LE, lawyers, investigators, and even the public. Explain how records used to prove ownership or leasing of property can be accessed in most jurisdictions in the first world when those records are to record rights and facilitate the eventual transfer of control of properties? Domain names can be thought of as virtual real estate that is (depending on your interpretation) rented or owned. Shouldn't we expect parallel interpretations of data access? Where should we look for such language to cover this?	4/11/2017 11:03 PM
19	a) What is a legitimte aim?	4/11/2017 9:08 PM

Q4 Purpose: Question #2The second question posed by the RDS PDP WG to privacy experts asked: “Article 6(1)(b) Directive provides that personal data may only be collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes (Article 7). Processing of personal data is allowed to a limited number of legitimate grounds, specified in Article 7 Directive. Under what circumstances might the publication of registration data elements that are personal data be allowable?” The draft answer provided to this question was: “The legal ground of 6(1)b can only be used if the data processing is necessary to perform a contract, in relation to each individual user. Clearly, this necessity depends on the purpose of the processing. If one of the purposes would be to allow people to get in touch with a domain name holder, ICANN needs to assess which data are strictly necessary for this purpose and which are the less intrusive ways to achieve this purpose. That is, ICANN has to assess the proportionality in relation to each user, and the subsidiarity, whether there are alternative ways of making these data available when necessary, such as the use of privacy proxies and layered access. ICANN needs to for example distinguish between registration data relating to individual users, and registration data relating to legal persons. In summary publication is a processing operation, it needs to match a purpose and the proportionality is the key aspect to focus on: is the data published proportionate to the purpose of the processing ? (which is to keep contact with domain name holder).”

Answered: 21 Skipped: 3

RDS PDP WG Poll - 11 April

Answer Choices	Responses	
a) What (if any) possible key concepts for RDS do you see in this answer?	100.00%	21
b) What (if any) follow-up questions do you suggest to seek clarification?	57.14%	12

#	a) What (if any) possible key concepts for RDS do you see in this answer?	Date
1	Allowing people to get in touch with a domain name holder is a legitimate purpose of processing RDS data. Proportionality needs to be assessed in relation to each data user (but it is not clear if this refers to each type of user, or literally every single user. It's also not clear why ICANN would be assessing this proportionality if it is not collecting or controlling the data. It's also not clear what "ICANN" means in this context, and when this assessment would take place.) "ICANN needs ... to distinguish between registration data relating to individual users, and registration data relating to legal persons," but it is not clear why or how this distinction would be applied.	4/15/2017 11:35 PM
2	(1) One legitimate purpose of processing RDS data may be to allow people to get in touch with a domain name holder. (2) Proportionality (whether data are strictly necessary for a particular purpose) must be assessed in relation to each data user. (3) "ICANN needs to distinguish between registration data relating to individual users, and registration data relating to legal persons."	4/15/2017 2:56 PM
3	I think one key is "proportionate". On Tuesdays call we talked about minimalist and maximalist approaches to collecting/processing data, I think the "proportionate" concept is more appropriate. This follows their contactability example ("...asses which data are strictly necessary for this purpose and which are the less intrusive ways to achieve this purpose.")	4/15/2017 7:13 AM
4	1 - data is treated differently for legal persons vs natural persons; 2- it may be a best practice to consider proportionality; 3 - data commissioners prefer a layered access approach	4/15/2017 5:07 AM
5	ICANN has to distinguish between individual and legal data.	4/14/2017 10:28 PM
6	Inequality is now going to be baked into the RDS.	4/14/2017 6:41 PM
7	Contactability is a key concept described in question/response #2 for sure. In addition the reminder that data privacy laws pertain to individuals only and not legal persons is important.	4/14/2017 2:55 PM
8	privacy proxies, layered access	4/14/2017 11:15 AM
9	ICANN needs to (for example) distinguish between registration data relating to individual users, and registration data relating to legal persons.	4/14/2017 9:15 AM
10	Distinction between legal persons and individual warranting a different degree of protection with regards to their data	4/13/2017 1:36 PM
11	I would say this entire answer is a key concept. To my read, the privacy experts have provided us some useful guidance on how to balance the conflicting interests of protecting privacy against those with legitimate interests in the data.	4/13/2017 11:51 AM
12	Is it possible to create levels of access, each matched to a specific purpose/need? If so, who/what will be the gate-keeper?	4/13/2017 5:24 AM
13	Access must be proportional in relation to each user and the least intrusive means to provide access must be enabled	4/12/2017 4:29 PM
14	Legitimate purposes allow publication of data and we need to distinguish between legal persons and individual users in collecting and processing data.	4/12/2017 11:08 AM
15	There is a clear need to identify and document query purposes. Data should be collected or derived only to meet these identified purposes.	4/12/2017 6:35 AM
16	Please see my answer to 3a - the answer looks to me like a suggestion to make elements (not necessarily limited to name and phone and address) marked as "personal info"/"not" . To prevent future need of reviewing it in situations, where, for example IP address of DNS server will be regarded as a personal info (for example a particular EU citizen installed it in home and his IP clearly gives his location), I think a mask could be used (1/0/2 for elements - to show that for the particular RDS record this field is "personal info"/"not"/"questionable"). Also I suggest that "Registrants' Benefits and Responsibilities" from RAA 2013 are to be reviewed as soon as we have enough input from the EU regulators to understand the text of satisfactory consent for persons" .. I think the latter might be out of the remit of the WG, do we could report our findings to GNSO Council (if this fits our charter).	4/12/2017 4:34 AM
17	The answer demonstrates that personal data is not publicly published. So ICANN would have to look in how a registrant can be contacted. This could be the Registrar or the Reseller. The EU GDPR makes a distinction between individual users and legal entities. So setting up a database for domain names with only legal entities would be less restrictive. Again this answer forces us to question the purpose of RDS and define the purpose with privacy by design/default.	4/12/2017 4:16 AM

RDS PDP WG Poll - 11 April

18	6(1)b can only justify the collection purposes for the registrar as only he holds a contract with the registrant. Any purposes not flowing from the technical necessity of the data for providing registrar services are not covered under 6(1)b and therefore cannot justify any collection of said data in the RDS.	4/12/2017 2:07 AM
19	Key concept is that Data should not be disseminated unless it is in line with the legitimate purpose. I agree that the ICANN has to assess the proportionality in relation to each user.	4/12/2017 1:06 AM
20	Gated access, declaration of purposes	4/11/2017 11:03 PM
21	1) Least intrusive ways should be used to achieve purposes. 2) Individual users must be distinguishable from legal persons. 3) Publication is a processing operation.	4/11/2017 9:08 PM
#	b) What (if any) follow-up questions do you suggest to seek clarification?	Date
1	First, there seems to be a disconnect between the questions, the answers and the underlying documents. The question refers to "Article 6(1)(b) Directive" as providing "that personal data may only be collected for specified, explicit and legitimate purposes." Article 6(1)(b) referred to in the answer refers to "perform[ing] a contract, in relation to each individual user." When I look at 6(1)(b) it relates to the language in the answer but not the question. Are there two different Article 6(1)(b)s and is this question and answer pair essentially an example of "mutual mistake"? If the question wasn't about the Article 6(1)(b) referred to in the answer, what was the question asking about? If the question was asking about this 6(1)(b), where did the language in the question come from? 6(1)(b) as cited in the answer is only of a list of different purposes in 6(1). If the intent was to ask about all of these purposes, shouldn't the answer deal with all of 6(1) and not only 6(1)(b)? How did those preparing the answer understand the language of the question beyond the citation to 6(1)(b)? Similarly, it would be helpful to understand what exactly the reference to "Article 7 Directive" is, and where in this Article 7 does it specify legitimate grounds? How did the author(s) understand the references to Article 7 and the information supposedly contained therein? Turning entirely to the answer, what is the basis for the reference to "strict necessity" and to "intrusiveness"? Where can one find the appropriate criteria for making the suggested assessment? What is this significance of distinguishing between registration data relating to individual users, and registration data relating to legal persons? Is registration data relating to legal persons even a subject within the purview of the data protection supervisors?	4/15/2017 11:35 PM
2	(1) What distinction would data protection principles require be made "between registration data relating to individual users, and registration data relating to legal persons"? (2) Please explain how "subsidiarity" relates to "whether there are alternative ways of making these data available when necessary." (3) In evaluating "whether there are alternative ways of making these data available when necessary," would factors such as cost, timeliness, reliability/predictability, restrictions on use of data, etc. via the "alternative ways" be relevant?	4/15/2017 2:56 PM
3	the above answer suggests a high standard for proportionality, rather than a reasonable standard for proportionality. Is that based in law or is it a best practice being suggested by a data protection commissioner? If performance of the contract is precisely for the purpose of providing transparency as to who has registered the domain as set forth in the registration contract, isn't that a sufficient purpose for disclosure?	4/15/2017 5:07 AM
4	I think that answer does not fully respond what was asked.	4/14/2017 10:28 PM
5	Why does ICANN seek to become the arbiter and by extension de-facto judiciary/police of the internet?	4/14/2017 6:41 PM
6	The response indicates that ICANN must distinguish between registration data for individuals and those related to legal persons. If this is in fact a requirement of the GDPR how should this determination be made and who should make it? If this determination is deemed inaccurate after data collection how does this change the "privacy calculus"?	4/14/2017 2:55 PM
7	What is the argument for not having privacy proxies an optional service? For most not seeking privacy there is ample information on the domain name's website. Why not leave layered access to registrars. They are the one's with legal presence in a variety of jurisdiction, and are likely facing different terms for privacy and for layered access.	4/14/2017 11:15 AM
8	Pb: Privacy, proportionality and staying in touch seem to be colliding concepts: staying in touch with a registrant could mean relasing some private data not included in thin WHOIS (but in thick WHOIS); is the data subject the only owner of his data, or can we consider that other stakeholders have proto-rights in certain limited circumstances that could bypass the requirement for consent?	4/13/2017 1:36 PM
9	None, makes total sense through a privacy perspective.	4/12/2017 4:16 AM
10	How will Individual users and legal persons be distinguished in this case? And incase someone claims that the domain belongs to them and they do not have the respective records or data for verification. This happens in cases where a registrant registers a clients domain and now the client needs ownership of the domain.	4/12/2017 1:06 AM
11	So if ICANN (or more appropriately, the multi-stakeholder process represented in the GNSO) determines that there is an overwhelmingly important purpose (e.g. public good) for publication of contact data, and states that rationale with sufficient clarity, are we all good?	4/11/2017 11:03 PM
12	a) What is meant by 'to perform a contract in relation to each individual user'?	4/11/2017 9:08 PM