

RDS PDP WG DT5 Deliverable 8 Nov 17

Purpose Name: **Regulatory**

Definition:

Information accessed by regulatory entities to enable contact with the registrant to ensure compliance with applicable laws.

Tasks:

- Regulatory authority to ensure that registrants, registries and/or registrars are compliant with applicable laws such as data protection, user privacy, tax law, etc.

Users:

- Tax collection agencies may request access registration data to identify identification of contacts for domain name used for on-line sales.
- Regulatory agencies may want to access registration information for many purposes: law enforcement investigations, legal compliance, , etc.

Data:

- Data tending to establish the identity and/or location of domain name registrant. For example, Registrant Name and Registrant Address (at least province/country address).
- Data that tend to categorize the type of users: individual, corporation, organization, academic, etc. The types of users may result in different tax systems or different compliance standards.

Specific data elements by use case:

1. Investigation into fraudulent and inaccurate information (by government and/or regulatory authority):
 - Registry Expiry Date
 - Registrant Name
 - Registrant Email
 - Name Server
 - Registrant Name
 - Registrant Phone

- Log files and, ... other records associated with the Registration containing dates, times, and time zones of communications and sessions, including initial registration
- Name server status
- 2. A tax authority may require the following data elements for billing and tax collection purpose
 - Domain Status
 - Domain Name
 - Registrant Name
 - Registrant Street
 - Registrant Email
- 3. A government agency
 - Domain name
 - Registrar Whois Server
 - Registrar URL
 - Update date
 - Registry Expiry Date
 - IP address
 - Registrar
 - Registrar abuse contact email
 - Reseller
 - Domain status
 - Registrant Name
 - Registrant E-mail
 - Admin name
 - Tech ID
 - Name server
 - Billing Contact name
 - DNSSEC
 - Registrar WHOIS server

RDS PDP WG DT5 Deliverable Redline Draft 8 November 2017

Purpose Name: **ICANN Contractual Enforcement**

Definition:

Information accessed to enable ICANN Compliance to monitor and enforce contracted parties' agreements with ICANN.

Tasks:

- Monitoring and investigation by ICANN Compliance of performance of contract terms.

Users:

- ICANN Compliance audit and respond to complaints about non-compliance by contracted parties (e.g., data inaccuracy or unavailability, UDRP decision implementation, transfer complaints, data escrow and retention).

Data:

ICANN organization may require the following data elements to check ICANN contractual compliance

- Registrant Name
- Registrant Street
- Registrant Email
- Registrant Email
- Name Server
- Domain Status
- Log files and, ... other records associated with the Registration containing dates, times, and time zones of communications and sessions, including initial registration
- Updated Date
- Registry Expiry Date

RDS Purpose: Regulatory

DT5 Answers to Questions – Final Draft for WG Review - 7 Mar 18

From: <https://community.icann.org/display/gTLDRDS/Phase+1+Documents> (See the 1st link for DT5)

Definition: Information accessed by regulatory entities to enable contact with the registrant to ensure compliance with applicable laws.

1. *Who associated with the domain name registration needs to be identified or contacted for the proposed Regulatory Purpose?*

- Applicable regulatory authorities with potential jurisdiction over the registrant, registrar and registry may need to be able to identify and as necessary contact the following:
 - a. The domain name registrant or designated representative
 - b. The domain name registrar
 - c. The domain name registry.

Comment [O1]: Note that one DT member objected to asking this question because that member believes ICANN is not a regulator.

Comment [O2]: Note that the drafting team did not assume that public identification of any of the three entities is required.

Comment [O3]: One DT member said that this should be deleted because ICANN is not a law enforcement agency nor is it a customer protection agency.

2. *What is the objective achieved by identifying and/or contacting each of those entities?*

- The objectives of identifying any of the entities listed for question 1 above are:
 - For a: to determine who is the authorized holder of the domain name registration and what is that entity's legal jurisdiction.
 - For b: to determine what registrar entered the domain name into the applicable top-level domain registry and what is the registrar's legal jurisdiction.
 - For c: to determine what registry entered the domain name into its top-level domain registry and what is the registry's legal jurisdiction.
- The objectives for contacting any of the entities listed for question 1 above, if needed, are:
 - To provide notification of any possible regulatory issues
 - To ask clarifying questions about any possible regulatory issues
 - To communicate possible regulatory actions under consideration
 - To provide official notification of final actions taken.

Comment [O4]: If a is deleted in Q1 above, it should be deleted here.

Comment [O5]: One DT member said that all of these should be deleted because they are outside the clarity, scope, definition and strict boundaries of a "purpose" statement. (It should be noted that this is not a purpose statement.)

Comment [O6]: Note that a registrant, while subject to the terms and conditions of its contract with a registrar, may take any action it likes. Once the requesting entity has the contact info for a registrant, the registrant's behavior or action is not the concern of the registrar or registry unless the regulatory authority makes a legal request for action from the registrar or registry (e.g., server hold).

3. *What might be expected of that entity with regard to the domain name?*

- Domain name registrants or designated representatives could do any or all the following as applicable:
 - Confirm they are the authorized holder of the domain name registration
 - Identify their legal jurisdiction
 - Ask clarifying questions about issues identified by the regulatory agency
 - Respond to questions asked by the regulatory agency

Comment [O7]: One DT member suggested inserting the following before 'could . . .': "if contacted by or through the registry or registrar from whom they receive the domain name".

- Provide relevant information to assist the regulatory agency in their deliberation.
- Appeal actions taken by the regulatory agency.
- Domain name registrars **could** do any or all the following as applicable:
 - Confirm they are the registrar of the domain name registration
 - Identify their legal jurisdiction
 - Ask clarifying questions about issues identified by the regulatory agency
 - Respond to questions asked by the regulatory agency
 - Provide relevant information to assist the regulatory agency or ICANN in their deliberation.
 - Put the regulatory agency, as legal and appropriate, in touch with the registrant.
 - Appeal actions taken by the regulatory agency.
- Domain name registries **could** do any or all the following as applicable:
 - Confirm they are the registry of the domain name registration
 - Identify their legal jurisdiction
 - Ask clarifying questions about issues identified by the regulatory agency
 - Respond to questions asked by the regulatory agency
 - Put the regulatory agency, as legal and appropriate, in touch with the registrant.
 - Provide relevant information to assist the regulatory agency in their deliberation
 - Appeal actions taken by the regulatory agency.

Comment [O8]: Note that registries can set their own internal policies with regard to how they respond to LEAs, or other regulatory requests, as appropriate to how the request is made and jurisdictional requirement.

RDS Purpose: ICANN Contractual Enforcement

DT5 Answers to Questions – Final Version for WG Review 7 March 18

From: <https://community.icann.org/display/gTLDRDS/Phase+1+Documents> (See the 2nd link for DT5)

Definition: Information accessed to enable ICANN Compliance to monitor and enforce contracted parties' agreements with ICANN.

1. *Who associated with the domain name registration needs to be identified and/or contacted for the ICANN Contractual Enforcement Purpose?*

- ICANN compliance needs to be able to identify and as necessary contact the representatives from the associated registrar and/or registry who is knowledgeable about the contracted party's fulfillment of RDS or other contractual requirements. ICANN compliance may also need to contact the registrant or its designated representative to confirm or verify facts or assertions made regarding the registrar's or registry's compliance.

Comment [O1]: It is important to note that there was divergence in the DT about whether ICANN Compliance would need to contact registrants in fulfilling its responsibilities. The DT reached out to Compliance to seek their input.

2. *What is the objective achieved by identifying and/or contacting each of those entities?*

- The objectives for contacting any of the entities listed for question 1 above, if needed, are:
 - To provide notification of any possible compliance issues
 - To ask clarifying questions about any possible compliance issues
 - To communicate possible compliance actions under consideration
 - To provide official notification of final actions taken.

Comment [O2]: It may be helpful to understand that some contract requirements relate directly to the RDS. In its deliberation going forward on the proposed purpose of ICANN Contractual Enforcement, the WG may need to decide whether this purpose should just involve RDS related contractual requirements or compliance with all contract requirements.

3. *What might be expected of that entity with regard to the domain name?*

- Domain name registrars and registries would be expected (by ICANN compliance) to do any or all the following as applicable:
 - Ask clarifying questions about issues identified by ICANN Compliance
 - Respond to questions asked by ICANN Compliance
 - Provide relevant information to assist ICANN Compliance in their deliberation.
 - Appeal actions taken by the ICANN Compliance.

DT5 Regulatory Enforcement – Slide 9

- DT5 answers introduced by Farell
- DT disagreed over whether contact with registrant was required for this purpose
- Questions regarding legitimacy of this purpose to be addressed during deliberation
 - ICANN isn't a regulatory agency – not within ICANN's mission
 - Is the WG wasting time discussing these answers when important discussions are on the interim compliance model are being held in parallel?
 - The DT answered these questions, but did not imply that some of the information regulatory authorities may request would be publicly available. It may be hidden behind a gate.
 - Third party agencies use WHOIS for this purpose & may have legitimate interest
 - Examples: consumer protection agencies (e.g., FTC), anti-fraud industry regulators
 - Do these examples overlap with criminal investigation?
 - Not necessarily – for example tax agencies (e.g., IRS)
 - After ICANN60, DT5 made an effort to eliminate overlap with DT7's definition
 - Can you provide access to third parties to data collected for another legitimate purpose?
 - This question was previously asked and answered – see exceptions in GDPR Art 6
 - Regarding expectations, after contact, the recipient of a notification or question can do anything they want – use of registration data for contact does not obligate response
 - Why is Registry listed? It is not in WHOIS today.
 - Answer: Identifies need; no assumption need must be met through RDS
 - Suggestion: Also identify which data is available from other sources

DT5 ICANN Contractual Enforcement – Slide 9

- DT5 answers introduced by Beth
- WG was joined by ICANN compliance staff Selim Manzak, Jennifer Scott, and Maguy Serad
- Compliance staff confirmed that:
 - ICANN does NOT use registrant data to initiate contact with registrants – as ICANN does not have contractual relationship with registrants, ICANN notifies the contracted party instead (e.g., Registrar)
 - ICANN DOES use registrant data to investigate complaints and enforce compliance with contractual obligations – for example, to investigate unauthorized use of another’s name or address in a registration
 - Compliance cannot at this point make any assumptions about how the GDPR compliance model will impact their procedures or use of registration data