



Update on GDPR & ICANN

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August 23, 2018

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Where are we?

- On May 25, 2018, the GDPR entered into force, see Art. 99 GDPR.
- The ICANN Board adopted a Temporary Specification on May 17, 2018, see <https://www.icann.org/resources/pages/gtld-registration-data-specs-en>.

- The TS is binding for all Rys and Rrs
- RAA 2013: Consensus Policies and Temporary Policies Specification, Section 2:
 - Binding
 - Board can issue, if „immediate temporary establishment of a specification or policy on the subject is necessary to maintain the stability or security of Registrar Services, Registry Services or the DNS or the Internet“

- 2.1.2.: „If the period of time for which the Temporary Policy is adopted exceeds 90 days, the Board shall reaffirm its temporary adoption every 90 days for a total period not to exceed one year, in order to maintain such Temporary Policy in effect until such time as it becomes a Consensus Policy. If the one year period expires or, if during such one year period, the Temporary Policy does not become a Consensus Policy and is not reaffirmed by the Board, Registrar shall no longer be required to comply with or implement such Temporary Policy.“

- Expedited PDP has started on Aug. 1
- Goal is to have the EPDP done before the anniversary of the TS
- Enormous time pressure

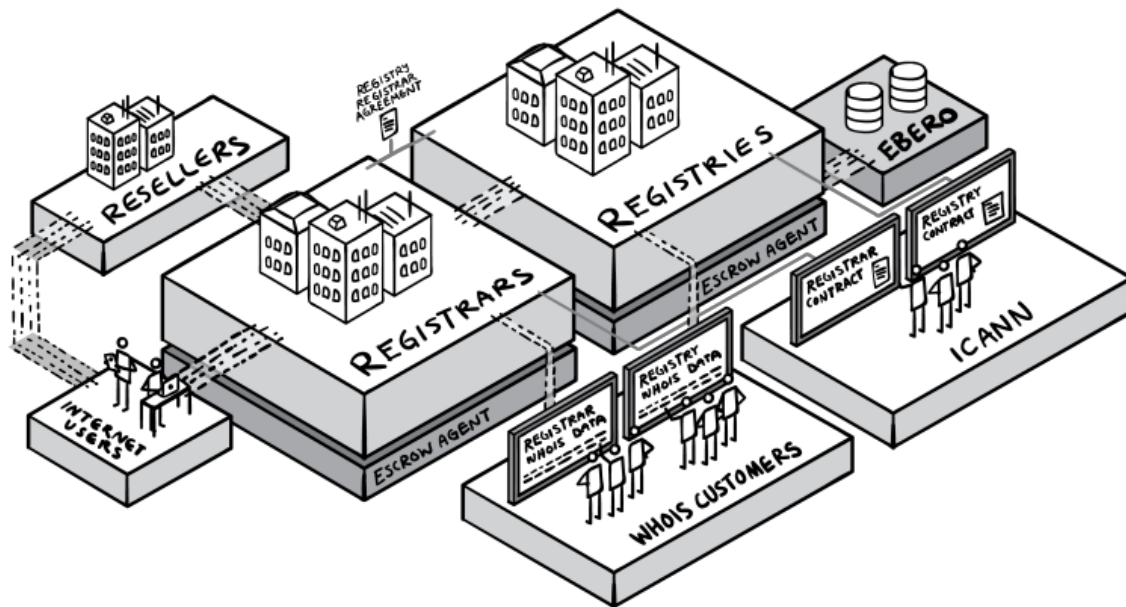
■ EPDP

- Charter can be found here:
<https://gnso.icann.org/sites/default/files/file/field-file-attach/temp-spec-gtld-rd-epdp-19jul18-en.pdf>
- Access will be discussed when other gating questions have been answered!
- First deliverable: Triage Report
- 4 Questionnaires where support / objection could be stated
- Triage report ready soon

- Let's go through some of the issues with the TS
- Note: Substantive discussions have not started
 - TS too GDPR-centric, needs to be more generic and non-EU-friendly
 - For some, the TS goes too far (over-compliance), for some it does not go enough

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- Note: Substantive discussions have not started
 - TS too GDPR-centric, needs to be more generic and non-EU-friendly
 - For some, the TS goes too far (over-compliance), for some it does not go enough
 - IMHO it needs to be substantially rewritten and missing parts need to be added

JOURNEY & DATA



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- Purposes for processing
- Collection
- Transfer from Rr to Ry
- Transfer to Escrow Agent
- Transfer to EBERO
- Publication of data
- Data Retention
- Data Processing requirements

- Purposes for processing
 - Separating ICANN's vs third parties' purposes
 - What's within and outside ICANN's mission
 - List is best updated when the substantive discussion was held

- Collection

- What data elements must be collected for Registrant, Admin-C, Tech-C, Billing-C
- ICANN vs. EPAG case might be interesting, see all documents here:

<https://www.icann.org/resources/pages/litigation-icann-v-epag-2018-05-25-en>

- Transfer from Rr to Ry
 - What data can be transferred and on what legal basis?
 - What do you need to perform the contract?
 - Any reason why the data should not be transferred?
 - Transfer optional?

- Transfer to Escrow Agent
 - Registries and Registrars both have different Escrow Agents they have to use
 - Responsibilities are not yet clear. Who is the controller, who is the processor
 - IMHO: ICANN is the controller and the Agent is the processor

- EBERO

- The Emergency Backend Operator does not get the data from the contracted parties directly. Still a topic for the EPDP?
- Who is responsible?
- IMHO ICANN is the controller and the EBERO is the processor

- Publication of data
 - Is too much / enough data redacted?
 - Some say too much, particularly for corporate registrants
 - How to make the distinction?
 - IMHO, the organization field also needs to be redacted
 - Clarification from the authorities would be great

- Data Retention
 - The issue is that the 2 years beyond the end of the registration needs to be justified
 - No (good) explanation so far

- More issues at a glance:
 - Rys, Rrs and ICANN as joint controllers for registration data and for associated processing activities?
 - Transfers
 - URS and UDRP
 - Zone File Access
 - ICANN reporting and compliance
 - Information of Data Subjects and repeating GDPR



Thank you!

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