

INITIAL REPORT PROPOSED CHANGES FOR DISCUSSION – STATUS ~~12-14~~ NOVEMBER 2018

The table below provides an overview of the changes proposed by EPDP Team members that staff didn't feel comfortable applying because either the proposed change is not clear, the proposed change affects previously agreed preliminary agreements / text, or is a substantive change that requires further discussion / consideration by the full EPDP Team (see <https://docs.google.com/document/d/1SoNTnvvadNQ8nX - Oxn4mtsd-gfLNxT54GXsXyGQwEQ/edit?ts=5be6721f> for all comments received to date). In certain cases, staff has proposed a path forward, but would appreciate EPDP Team/commenter feedback before applying this change. Note that a number of comments were made in relation to preliminary recommendations and/or text that is still under consideration. It is the expectation that this input will be raised in the context of those discussions.

1. NEW ISSUES

	Proposed Change	Rationale	Where	By	Why is further consideration by EPDP Team needed before this change is applied?
a.	<p>EPDP Team Preliminary Rec #5. <i>The EPDP Team confirms that the specifically-identified data elements under “[t]ransmission of registration data from Registrar to Registry”_within the data elements workbooks must be transferred from registrar to registry. These data elements are: [include list following completion of work on data elements workbooks]</i></p> <p>Further discussion required. Issue with having a requirement for transmitting from registrar to registry to a place not adhering to GDPR.</p>	<p>Not possible to have uniformity if applied geographically.</p>	<p>Rec 5 page 15/16 & Rec 15</p>	RrSG	<p>Not previously discussed.</p> <p>Possible way to address this concern: should similar language be recommended for inclusion in relation to transfer of data from registrar to registry as is currently in place in relation to data transfer to escrow provider under the Temporary Specification:</p> <p>International Transfers</p> <p>In the course of performing the requirements under the agreement with the Escrow Agent, it may be necessary for the Escrow Agent to Process Personal Data in a country that is not deemed adequate by the European Commission per Article 45(1) of the GDPR. In such a case, the transfer and Processing will be on the basis of adequate safeguards permitted under Chapter V of the GDPR, including the use of Standard Contractual Clauses (2004/915/EC) (or its successor</p>

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					clauses), and the Escrow Agent and Controller MUST comply with such appropriate safeguards.
b.	<p>EPDP Team Preliminary Rec #18. [The EPDP Team recommends that identification of Data Controllers & Processors or other recommendations made in this report will not affect “No Third-Party Beneficiary” clauses in existing ICANN-Contracted Party agreements.]</p> <p>Remove Rec #18</p>	Very specific contract clause seemingly of the type we are supposed to be avoiding in this EPDP	Rec #18	BC	To be discussed by EPDP Team
c.	<p>The EPDP Team also took note of the fact that an existing GNSO PDP WG, namely the Review of All Rights Protection Mechanisms in All gTLDs (RPMs) PDP WG, is currently tasked with reviewing the URS and UDRP and is expected to factor in any changes resulting from GDPR requirements.</p> <p>Is the statement that the RPMs PDP WG is expected to factor in any changes resulting from GDPR requirements accurate?</p>	accuracy	1025-1027	RySG	<p>Staff to confirm whether or not this is being factored in. If not, consider recommending to the GNSO Council that the RPM WG is directed to factor in any changes resulting from GDPR requirements in its review of the URS and UDRP.</p> <p><u>Staff confirmed that the RPM PDP WG is expected to factor in any changes resulting from GDPR requirements, but any guidance from the EPDP Team on issues to specifically consider may assist in this process?</u></p>
d.	<p><u>Noting some of the possible legal and technical challenges involved in collecting data from a third party, some (RySG, RrSG, NCSG) expressed the view that registrars should have the option, but should not be contractually required, to offer the RNH the ability to provide additional contact fields, e.g., technical function. Others (BC, IPC, ALAC, GAC) expressed the view that registrars should be required to offer the RNH</u></p>	<p><u>This sentence is not clear and the language application of “collecting data” is too broad and misleading. Should be changed to:</u></p>	<u>717-725</u>	IPC	<p><u>Any concerns about this proposed clarification?</u></p>

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	<p><u><i>this ability, as making this optional could ultimately lead to risks to DNS stability, security and resiliency. The stakeholders supporting this view noted this functionality is considered important and desirable for some RNHs.</i></u></p> <p>Proposed rewording: “There was concern expressed by RySG, RrSG, NCSG that registrars should be permitted to make certain data fields optional because of the legal and technical challenges in the collection of data from third parties. Other groups, BC, IPC, ALAC and GAC, expressed the view that registrars should be required to offer the RHN the ability to supply data, as making this optional could ultimately result in risk to the stability, security and resiliency of the DNS system. Moreover, supplying the data is often important and desirable for the RNH.</p>				
e.	<p><u><i>The EPDP Team also took note of a related footnote which states, “[if contact details for persons other than the RNH are provided] it should be ensured that the individual concerned is informed”. The EPDP Team discussed whether this note implies that it is sufficient for the Registered Name Holder (RNH) to inform the individual it has designated as the technical contact, or whether the registrar may have the additional legal obligations to obtain consent. The EPDP Team</i></u></p>		<u>715-716</u>	<u>IPC</u>	<u>EPDP Team to confirm understanding</u>

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	<p><u><i>agreed to request further clarification from the EDPB on this point.</i></u></p> <p><u>Is this accurate? Did we leave this question open to only getting Board input? Or did we propose to also get legal input on this or additionally agree to add language to provide educational guidance to data subjects/registrants to ensure consent was obtained</u></p>				

2. NOT CLEAR WHAT CHANGES, IF ANY, ARE BEING RECOMMENDED

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f.	<p>EPDP Team Preliminary Rec #6.</p> <p><i>1. The EPDP Team recommends updates to the contractual requirements for registries and registrars to transfer data that they process to the data escrow provider to ensure consistency with the data elements workbooks workbook related to the purpose to provide mechanisms for safeguarding Registered Name Holders' Registration Data.</i></p> <p><i>2. The specifically-identified data elements the EPDP Team recommends to be transferred are provided within the data elements workbook related to the purpose to provide mechanisms for safeguarding Registered Name Holders' Registration Data (see Annex [include reference]). These data elements are: [list data</i></p>	<p>Art 25 & data minimization.</p> <p>GDPR is just one data protection regulation.</p>	<p>Rec 6 Page 16</p>	RrSG	<p>Not clear what change, if any, is being recommended.</p>

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	<p><i>elements following completion of escrow data elements workbooks].</i></p> <p><i>3. The EPDP Team recommends that GDPR-compliant data processing agreements are entered into between ICANN Org and the data escrow providers.</i></p> <p>This would no longer be applicable if rec 5 is dealt with differently.</p> <p>6.1: Should be cautious of weakening requirements to make data accurate.</p>				
g.	<p><i>EPDP Team Preliminary Rec #7.</i></p> <p><i>1. The EPDP Team recommends that updates are made to the contractual requirements for registries and registrars to transfer the domain name registration data that they process to ICANN Compliance when required/requested in line with the data elements workbook related to the purpose to handle contractual compliance monitoring requests, audits, and complaints submitted by Registry Operators, Registrars, Registered Name Holders, and other Internet users (see Annex [include reference]).</i></p> <p><i>2. The specifically-identified data elements the EPDP Team recommends to be transferred are provided within the data elements workbook related to the purpose to handle contractual compliance monitoring requests, audits, and complaints submitted by Registry Operators, Registrars, Registered Name Holders, and other Internet users (see Annex [include reference]).</i></p>	We need to keep focus on the laws	Rec 7 Page 17	RrSG	Not clear what change, if any, is being recommended. RAA already provides for applicable law requirement: "In the event Registrar believes that the provision of any such data, information or records to ICANN would violate applicable law or any legal proceedings, ICANN and Registrar agree to discuss in good faith whether appropriate limitations, protections, or alternative solutions can be identified to allow the production of such data, information or records in complete or redacted form, as appropriate".

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	<p><i>These data elements are: [include following finalization of purpose F data elements workbook].</i></p> <p>7.1: These contractual requirements should be subject to applicable law. 7.2 should be narrowed down to the purposes of compliance and limited by applicable law.</p>				
<u>h.</u>	<p>EPDP Team Preliminary Rec #11. <i>The EPDP Team recommends that Registrars are required to retain the herein-specified data elements for a period of one year following the life of the registration. This retention period conforms to the specific statute of limitations within the Transfer Dispute Resolution Policy ("TDRP). Other relevant parties, including registries, escrow providers and providers and ICANN Compliance, have separate retention periods less than or equal to one year accordingly and in line with the GDPR requirements.</i></p> <p>There should not be a specified time period.</p>	Retaining data is tied to business purposes. If you want to tie it to TDRP don't tie to a time. Retention does not only depend on GDPR but also other legislation depending on your country/jurisdiction. (ie up to 10 years for tax purposes.)	Rec 11 Page 21	RrSG	Not clear what change, if any, is being recommended. Concerns previously reached compromise. Note that this policy recommendation does not prevent contracted parties from having different retention periods for their own purposes resulting from local requirements.
<u>i.</u>	<p>Sunsetting WHOIS Contractual Requirements <i>q1) After migration to RDAP, when can requirements in the Contracts to use WHOIS protocol be eliminated?</i></p>	Flagging this for the EPDP Team	1107-1112 Page 36	RrSG	Not clear what change, if any, is being proposed. Please take note of the proposed response in relation to this charter question: [At the time of publication of this Initial Report, the EPDP Team elected to prioritize its policy

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	<p><i>q2) If the EPDP Team’s decision includes a replacement directory access protocol such as RDAP, when can requirements in the Contracts to use WHOIS protocol be eliminated?</i></p> <p>It should be noted that RDAP Profile is specific to the Temp Spec, and additional RDAP Profiles will need to be created in response to EPDP outcomes and/or GNSO policy development</p>				<p>recommendations with respect to the Temporary Specification. The EPDP Team believes addressing eventual migration to RDAP and sunseting of WHOIS requirements is premature at this time, i.e., before the policy recommendations are finalized.</p> <p>Following receipt of further feedback from the ICANN Community and Data Protection Authorities (if received), the EPDP Team will finalize its recommendations with respect to the Temporary Specification. In the process of this finalization, the EPDP Team will consider drafting implementation guidance regarding the eventual migration to RDAP and consequent sunseting of WHOIS requirements.</p> <p>While the exact date of the possible elimination of WHOIS requirements will be determined in the policy implementation phase, the EPDP Team notes any current WHOIS requirements negated or made redundant by eventual policy recommendations will no longer be required.]</p>

3. ADDRESSED THROUGH STAFF RESPONSE / PROPOSED APPROACH?

	Proposed Change	Rationale	Where	By	Why is further consideration by EPDP Team needed before this change is applied?
i.	<p><i>The EPDP Team observed that the reference in the Temporary Specification to ‘in another mechanism’ was unclear. As such, this language should be clarified, possibly by</i></p>	accuracy	1029-30	RySG	<p>This was raised in the context of the triage survey. Staff clarified that this what was intended with the original reference to ‘another mechanism’ in the Temporary Specification.</p>

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	<p><i>adding 'determined by the EPDP Team' to clarify that the EPDP Team may develop or recommend as part of its discussions on a standardized access framework (once the Charter's gating questions have been addressed) another mechanism by which full Registration Data is expected to be made available by the Registry Operator.</i></p> <p>Is the bulleted text intended to propose an amendment to the Temp Spec? If so, during what meeting was this discussed.</p> <p>Need to identify the actor that will clarify the language (eliminate passive voice)</p>				
k.	<p>EPDP Team Preliminary Rec #20. 1042 <i>The EPDP Team recommends that the GNSO Council instructs the review of all RPMs PDP WG to consider, as part of its deliberations, whether there is a need to update existing requirements to clarify that a complainant must only be required to insert the publicly-available RDDS data for the domain name(s) at issue in its initial complaint. The EPDP Team also recommends the GNSO Council to instruct the RPMs PDP WG to consider whether upon receiving updated RDDS data (if any), the complainant must be given the opportunity to file an amended complaint containing the updated respondent information.</i></p> <p>EPDP Team Preliminary Rec #21.</p>	<p>Not a policy recommendation (RySG)</p> <p>This a process matter and not a content recommendation. (RrSG)</p>	<p>1042-1050 1052-1057</p>	<p>RySG RrSG</p>	<p>Per the PDP Manual, recommendations to the GNSO Council can take many shapes or forms, including requests / advice to the GNSO Council.</p>

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	<p><i>The EPDP Team requests that when the EPDP Team commences its deliberations on a standardized access framework, a representative of the RPMs PDP WG shall provide an update on the current status of deliberations so that the EPDP Team may determine if/how the WG's recommendations may affect consideration of the URS and UDRP in the context of the standardized access framework deliberations.</i></p> <p>Not a policy recommendation (RySG) Rec #21 - It is not necessary to be a recommendation</p>				
<u>l.</u>	<p>EPDP Team Preliminary Rec #22. <i>The EPDP Team recommends that ICANN Org should enter into data processing agreements with dispute resolution providers in which, amongst other items, the data retention period is specifically addressed, as this will affect the ability in having publicly-available decisions.</i></p> <p>Not clear why the EPDP team should point this out.</p>	It is always an obligation for ICANN to comply with data protection law. ICANN ORG should already be compliant.	Rec22 Page 35	RrSG	This is a recommendation that came out of the small team M deliberations. Is there any harm in keeping it in here?
<u>m.</u>	<p><i>The EPDP Team noted that as part of the Team's deliberations, no significant issues have been reported in relation to the functioning and operation of the URS and UDRP following the adoption of the Temporary Specification.</i></p> <p>Change: "no significant issues have been reported in relation to the functioning and</p>	Correction (BC)	BC RySG	P33	Proposed rewording to address both comments: The EPDP Team noted that as of the Team's deliberations, although some members have reported no significant issues have been reported in relation to the functioning and operation of the URS and UDRP following the adoption of the Temporary Specification, others reported difficulties as access to domain name registration

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	operation of the URS and UDRP following the adoption of the Temporary Specification” → “although some members have reported no significant issues in the relation of the URS and UDRP following the adoption of the Temporary Specification, others have encountered difficulties, since the UDRP all but requires pre-filing access to domain registrant data (two out of the three UDRP prongs presuppose that complainants are able to identify the registrant of the domain name) which is often unavailable in the absence of an agreed upon standard for “reasonable access”. (BC) Disagree with above because vague and overly broad (RySG)				pre-filing is often unavailable in the absence of an agreed upon standard for “reasonable access”.
n.	Preliminary Recommendation #24 <i>The EPDP Team recommends that the GNSO Council, as part of its review of the Transfer Policy, specifically requests the review of the implications, as well as adjustments, that may be needed to the Transfer Policy as a result of GDPR.</i> Delete Preliminary Rec. #24 or revise to make a request	Not a policy recommendation	1097-1100	RySG	Per the PDP Manual, recommendations to the GNSO Council can take many shapes or forms, including requests / advice to the GNSO Council.
o.	Staff should identify, for each preliminary recommendation, the EPDP WG meeting in which the EPDP WG agreed upon the recommendation.	RySG members have been unable to map recommendations (as contained in IR) to meetings	All recs	RySG	As per the previous response to the RySG: The majority of the policy recommendations are direct results of the work on the data elements workbooks and aim to reflect those (Preliminary Recommendations #1, #4, #5, #6, #7, #8, #9, #10, #11, #15, #17). Others are:

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					<ul style="list-style-type: none"> • The result of policy recommendations that were agreed to in the context of the discussion on the data elements workbooks (Preliminary recommendation #2, #3), • Small team efforts (Preliminary Recommendations #12, #13, #14, #16), • Suggested during the LA F2F meeting in the context of a small group discussion (#18), • Derived from the discussions on the triage report and input provided in response to the triage survey (Preliminary Recommendations #19, #20, #21, #22, #23, #24, #25), • Aiming to capture recent discussions (Preliminary Recommendation #26). <p>Do note that all items in blue in the Initial Report are still under discussion / review. The EPDP Team was asked to flag any other preliminary recommendations that require further discussion by Monday 5 November so that these can be added to the list of outstanding items.</p> <p>Identifying at which meeting exactly all these recommendations were discussed / agreed will take significant staff time. What is the concern that the RySG would like to see addressed? Would it be more productive to focus on which specific recommendations raise concerns so that</p>

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					staff can identify the relevant meeting when this was discussed?

4. EXPECTED TO BE ADDRESSED AS PART OF ONGOING DISCUSSIONS

	Proposed Change	Rationale	Where	By	Why is further consideration by EPDP Team needed before this change is applied?
p.	<p>EPDP Team Preliminary Rec #9. <i>The EPDP Team recommends that registrars provide further guidance to a Registered Name Holder concerning the information that is to be provided within the Organization field.</i></p> <p>"registrars to provide further guidance..." Further guidance for what? More context is needed</p>	Will depend on the outcome of the legal vs natural persons discussion	Rec 9 Page 19	RrSG	To be further considered in the context of the data redaction discussion

5. PROPOSED CHANGES CONCERNING PREVIOUSLY AGREED COMPROMISES – UNLESS ALL AGREE TO REOPEN THESE DISCUSSIONS, THESE ITEMS TO BE CONSIDERED FOLLOWING PUBLICATION OF INITIAL REPORT

	Proposed Change	Rationale	Where	By	Why is further consideration by EPDP Team needed before this change is applied?
q.	<p>Original language: <i>Maintaining the security, stability and resiliency of the Domain Name System in accordance with ICANN's mission through the enabling of lawful access for legitimate third-party interests to data elements collected for other purposes identified herein</i></p> <p>Replace with:</p>	Narrow down on purposes	Rec 1.2 page 11	RrSG	This changes the wording of Purpose B which is the result of a previously reached compromise.

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	Maintaining lawful disclosure for legitimate 3rd party interest to data elements already collected for purposes identified herein				
r.	<p>Original language: <i>Enable communication with and/or notification to the Registered Name Holder and/or their delegated agents of technical and/or administrative issues with a Registered Name;</i></p> <p>Replace with: Enable Communications with and/or notification to the RNH, or their designated agent, for issues regarding a Registered Name</p>	Removing non contracted actors and keep focus on designated agent as part of IRTP-C, defined term	Rec 1.3 page 11	RrSG	This changes the wording of Purpose C which is the result of a previously reached compromise.
s.	<p>Original language: EPDP Team Preliminary Rec #2 <i>The EPDP Team commits to develop and coordinate policy in the system for standardized access to non-public registration data portion of this EPDP regarding lawful access for legitimate third-party interests regarding abuse or intellectual property to data identified herein that is already collected.</i></p> <p>RrSG prefer the term ‘disclosure’ rather than ‘access’</p> <p>I fear this is not a recommendation that we can even make. it is not in scope for the ePDP to “develop and coordinate” this policy. We should be clear on this. (RySG)</p>	Access implies third-parties will be able to see all non-public data. Standard third-party disclosure is a much better term.	Rec 2 page 11	RrSG	<p>This changes the wording of a previously reached compromise</p> <p>Possible way to address this concern is to track the language from the charter for this recommendation:</p> <p>Per the EPDP Team Charter, the EPDP Team is committed to considering a system for Standardized Access to non-public Registration Data once the gating questions in the charter have been answered. This will include addressing questions such as:</p> <ul style="list-style-type: none"> • What are the legitimate purposes for third parties to access registration data? • What are the eligibility criteria for access to non-public Registration data?

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	<p><u>It is within the Charter, my comment is that it does not read properly "regarding lawful access for legitimate third-party interests regarding abuse or intellectual property to data....it should read: "The EPDP Team, as part of the stated scope of its charter, commits to develop and coordinate policy for standardized access to non-public registration data, identified herein and already collected, in relation to legitimate third party interests regarding intellectual property rights or abuse." (IPC)</u></p>				<ul style="list-style-type: none"> • Do those parties/groups consist of different types of third-party requestors? • What data elements should each user/party have access to?
<u>t.</u>	<p>EPDP Team Preliminary Rec #3. <i>The EPDP Team recommends that requirements related to the accuracy of registration data under the current ICANN contracts and consensus policies shall not be affected by this policy.</i></p> <p>Amend: The EPDP Team recommends that requirements related to the accuracy of registration data under the current ICANN contracts and consensus policies are sufficient and shall not be affected by this policy.</p>		Rec 3 page 12	RrSG	This changes the wording of a previously reached compromise
<u>u.</u>	<p>EPDP Team Preliminary Rec #3. <i>The EPDP Team recommends that requirements related to the accuracy of registration data under the current ICANN contracts and consensus policies shall not be affected by this policy.</i></p>	Unresolved parking lot issue	Rec 3 p12 following "...by this policy"	BC	This changes the wording of a previously reached compromise

	Proposed Change	Rationale	Where	By	Why is further consideration by EPDP Team needed before this change is applied?
	Add: “, unless it is subsequently determined that certain of the purposes described below cannot be properly fulfilled if there is inaccurate information.”				
V.	<p>EPDP Team Preliminary Rec #11. <i>The EPDP Team recommends that Registrars are required to retain the herein-specified data elements for a period of one year following the life of the registration. This retention period conforms to the specific statute of limitations within the Transfer Dispute Resolution Policy (“TDRP”). Other relevant parties, including registries, escrow providers and providers and ICANN Compliance, have separate retention periods less than or equal to one year accordingly and in line with the GDPR requirements.</i></p> <p>Create footnote after (“TDRP”); move “Other relevant parties” sentence into footnote text; and provide examples of the referenced retention periods</p>	The “Other relevant parties” sentence is not a policy recommendation.	636-38	RySG	Concerns proposed change to previously reached compromise
W.	<p>EPDP Team Preliminary Rec #16. <i>The EPDP Team recommends that the current requirements in the Temporary Specification in relation to reasonable access remain in place until work on a system for Standardized Access to Non-Public Registration Data has been completed, noting that the term should be modified to refer to “parameters for responding to lawful disclosure requests”. Furthermore, the EPDP Team recommends</i></p>	The temp spec (as it exists right now) is the “policy” and this new policy will replace that so it’s not appropriate to include tweaks to the temp spec in	Rec 6 Page 26	RrSG	Concerns proposed change to previously reached compromise

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	<p><i>that criteria around the term “reasonable” are further explored as part of the implementation of these policy recommendations addressing:</i></p> <ul style="list-style-type: none"> <i>o [Practicable]* timelines criteria for responses to be provided by Contracted Parties;</i> <i>o Format by which requests should be made and responses are provided;</i> <i>o Communication/Instructions around how and where requests should be submitted;</i> <i>o Requirements for what information responses should include (for example, auto-acknowledgement of requests and rationale for rejection of request);</i> <i>o Logging of requests.</i> <p><i>[*Some concern expressed that timeliness that should not be translated into requirements that are impractical for contracted parties]</i></p> <p>This should not be a policy recommendation</p>	<p>any report this group issues.</p>			