

EPDP

Interim Report

CPWG – 28 Nov 2018

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Purposes for Processing Data

- Personal data may be processed (and collection in itself is processing) if there is a legitimate reason, and the data subject must be informed of the reason(s).

Data Controllers and Processors

- A Data Controller is *the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data.* (You can also have Joint Controllers)
- A Data Processor is *a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller*

Public Comment

For most parts, the options are:

- Support Purpose as written;
- Support Purpose intent with wording change;
- Significant change required: changing intent and wording
- Purpose should be deleted.

With options for giving details of changes and/or rationale.

Recommendation #1

Purposes for Processing Registration Data

The EPDP Team recommends that the following purposes for processing gTLD Registration Data form the basis of the new ICANN policy:

Note that for each of the below purposes, the EPDP Team has also identified: (i) the related processing activities; (ii) the corresponding lawful basis for each processing activity; and (iii) the data controllers and processors involved in each processing activity.

Rec #1: Purpose 1

AS SUBJECT TO REGISTRY AND REGISTRAR TERMS, CONDITIONS AND POLICIES, AND ICANN CONSENSUS POLICIES:

- (I) TO ESTABLISH THE RIGHTS OF A REGISTERED NAME HOLDER IN A REGISTERED NAME;
- (II) TO ENSURE THAT A REGISTERED NAME HOLDER MAY EXERCISE ITS RIGHTS IN THE USE AND DISPOSITION OF THE REGISTERED NAME; AND
- (III) TO ACTIVATE A REGISTERED NAME AND ALLOCATE IT TO THE REGISTERED NAME HOLDER

Rec #1: Purpose 2

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 THIRDPARTY INTERESTS TO DATA ELEMENTS COLLECTED FOR THE OTHER PURPOSES IDENTIFIED HEREIN

Rec #1: Purpose 3

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

Rec #1: Purpose 4

PROVIDE MECHANISMS FOR SAFEGUARDING REGISTERED NAME HOLDERS' REGISTRATION DATA IN THE EVENT OF A BUSINESS OR TECHNICAL FAILURE, OR OTHER UNAVAILABILITY OF A REGISTRAR OR REGISTRY OPERATOR

Rec #1: Purpose 5

HANDLE CONTRACTUAL COMPLIANCE MONITORING REQUESTS, AUDITS, AND COMPLAINTS SUBMITTED BY REGISTRY OPERATORS, REGISTRARS, REGISTERED NAME HOLDERS, AND OTHER INTERNET USERS

Rec #1: Purpose 6

COORDINATE, OPERATIONALIZE, AND FACILITATE POLICIES FOR RESOLUTION OF DISPUTES REGARDING OR RELATING TO THE REGISTRATION OF DOMAIN NAMES (AS OPPOSED TO THE USE OF SUCH DOMAIN NAMES), NAMELY, THE UDRP, URS, PDDRP, RRDRP, AND FUTURE DEVELOPED DOMAIN NAME REGISTRATION RELATED DISPUTE PROCEDURES FOR WHICH IT IS ESTABLISHED THAT THE PROCESSING OF PERSONAL DATA IS NECESSARY.

Rec #1: Purpose 7

ENABLING VALIDATION TO CONFIRM THAT REGISTERED NAME HOLDER MEETS OPTIONAL GTLD REGISTRATION POLICY ELIGIBILITY CRITERIA VOLUNTARILY ADOPTED BY THE REGISTRY OPERATOR

Additional Purposes

- Question #1: Purposes for Processing Registration Data

If you recommend additional purposes for processing registration data, please enumerate and write them here, keeping in mind compliance with GDPR.

- Use by ICANN Org
- GDD for Accuracy Reporting System
- ??

Recommendation #2

Standardized Access

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:

- What are the legitimate purposes for third parties to access registration data?
- What are the eligibility criteria for access to non-public Registration data?
- Do those parties/groups consist of different types of third-party requestors?
- What data elements should each user/party have access to?

In this context, amongst others, disclosure in the course of intellectual property infringement and DNS abuse cases will be considered.

Recommendation #3

Contractual Accuracy Requirements

- 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.

Recommendation #4

Data Elements

The EPDP Team recommends that the data elements defined in the data elements workbooks in Annex D are required to be collected by registrars. In the aggregate, this means that the following data elements are to be collected (or automatically generated):

Data Elements (Collected and Generated) Note, Data Elements indicated with ** are generated either by the Registrar or the Registry

Data Elements

```
Domain Name**
Registry Domain ID**
Registrar Whois Server**
Registrar URL**
Updated Date**
Creation Date**
Registry Expiry Date**
Registrar Registration Expiration Date**
Registrar**
Registrar IANA ID**
Registrar Abuse Contact Email**
Registrar Abuse Contact Phone**
Reseller**
Domain Status**
Registry Registrant ID**
Registrant Fields:
.      Name
.      Organization (optional)
.      Street
```

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.      City
.      State/province
.      Postal code
.      Country
.      Phone
.      Phone ext (optional)
.      Fax (optional)
.      Fax ext (optional)
.      Email
Tech ID (optional)
Tech Fields:
.      Name (optional)
.      Phone (optional)
.      Email (optional)
Name Server
DNSSEC (optional)
Name Server IP Address**
Last Update of Whois Database**
```

Question #2: Do you agree that all these data elements should be collected / generated to achieve the Purposes identified in the Initial Report?

Recommendation #4, Con't

Data Elements

The EPDP Team recommends that the following data elements are optional for the Registered Name Holder (RNH) to provide:

- technical contact name
- technical contact email and
- technical contact phone number

The EPDP Team has discussed two definitions of the term “optional” as used in this recommendation:

- (1) registrars must offer the data field and registrants can decide whether to fill in the field or leave in blank (in which case the query would return the registered name hold data; OR
- (2) registrars can offer this field at their option

Recommendation #4, Con't Data Elements

The EPDP team recommends that contact information for billing and administrative contacts should not be collected. Do you agree that this information should not be collected?

Recommendation #5

Transmission of Data from Registrar to Registry

The EPDP Team recommends that the specifically identified data elements under “Transmission of registration data from Registrar to Registry” within the data elements workbooks must be transferred from Registrar to Registry. In the aggregate, these data elements are the same as those in Recommendation #4 for the reasons stated in the Data Workbooks found in Annex D of the Initial Report.

Recommendation #6

Transmission of Data to Data Escrow Providers

1. The EPDP Team recommends that ICANN Org enter into legally-compliant data processing agreements with the data escrow providers.
2. 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 that analyze the purpose to provide mechanisms for safeguarding Registered Name Holders' Registration Data.
3. The data elements workbook that analyzes the purpose to provide mechanisms for safeguarding Registered Name Holders' Registration Data contains the specifically-identified data elements the EPDP Team recommends be transferred by Registries and Registrars to data escrow providers (see Annex D, Workbook 4).

Recommendation #7

Transmission of Data from Registries/Registrars to ICANN Compliance

1. The EPDP Team recommends that updates are made to the contractual requirements for registries and registrars to transfer to ICANN Compliance the domain name registration data that they process when required/requested, consistent with the data elements workbook that analyzes 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 D, Workbook 5).
2. The data elements workbook that analyzes the purpose to handle contractual compliance monitoring requests, audits, and complaints submitted by Registry Operators, Registrars, Registered Name Holders, and other Internet users contains the specifically-identified data elements the EPDP Team recommends be transferred from registries and registrars to ICANN Compliance (see Annex D, Workbook 5).

Recommendation #8

Data Redaction

The EPDP Team recommends that redaction must be applied as follows to the data elements that are collected. Data elements neither redacted nor anonymized must appear in a freely accessible directory.

Recommendation #8

Data Redaction – Not redacted

Domain Name
Registrar Whois Server
Registrar URL
Updated Date
Creation Date
Registry Expiry Date
Registrar Registration Expiration Date
Registrar
Registrar IANA ID
Registrar Abuse Contact Email
Registrar Abuse Contact Phone
Reseller
Domain Status

Registrant Fields

- State/province
- Country
- Anonymized email / link to web form

Tech Fields

- Anonymized email / link to web form

NameServer(s)
DNSSEC No
Name Server IP Address
Last Update of Whois Database

Recommendation #8

Data Redaction - Redacted

Registrant Fields

- Name
- Street
- City
- Postal code
- Phone
- Email

Tech Fields

- Name
- Phone
- Email

Recommendation #8

Data redaction - Undecided

- Organization (opt.)

Recommendation #9

Organization Field

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. (For further information, please refer to the Initial Report discussion, beginning on p. 42).

Recommendation #10

In relation to facilitating email communication between third parties and the registrant, the EPDP Team recommends that current requirements in the Temporary Specification that specify that a Registrar **MUST** provide an email address or a web form to facilitate email communication with the relevant contact, but **MUST NOT** identify the contact email address or the contact itself, remain in place.

Recommendation #11

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”).

Effects of Geographic Location

Legal vs Natural Persons

Question #3a: What other factors should the EPDP team consider about whether Contracted Parties should be permitted or required to differentiate between registrants on a geographic basis? (For more information, please refer to the Initial Report, beginning on p. 47.

- Consider benefits and risks
- Should there be further study as to whether procedures would be feasible to accurately distinguish on a global scale whether registrants/contracted parties fall within jurisdiction of the GDPR or other data protection laws? Please provide a rationale.

Effects of Geographic Location

Legal vs Natural Persons

Question #3b: What other factors should the EPDP team consider about whether Contracted Parties should be permitted or required to differentiate between natural and legal persons?

- Consider benefits and risks
- Are you aware of existing examples where a legal/natural differentiation is already made and could it apply at a global scale for purposes of registration data? If yes, please provide additional information.

Recommendation #12

Reasonable Access

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 that criteria around the term “reasonable” are further explored as part of the implementation of these policy recommendations addressing:

- o [Practicable]* timelines criteria for responses to be provided by Contracted Parties;
- o Format by which requests should be made and responses are provided;
- o Communication/Instructions around how and where requests should be submitted;
- o Requirements for what information responses should include (for example, auto-acknowledgement of requests and rationale for rejection of request);
- o Logging of requests.

[*Some concern expressed that timeliness that should not be translated into requirements that are impractical for contracted parties].

Recommendation #13

Joint Controller Agreements

Based on the information and the deliberations the EPDP Team had on this topic and pending further input and legal advice, the EPDP Team recommends that ICANN Org negotiates and enters into a Joint Controller Agreement (JCA) with the Contracted Parties.

In addition to the legally required components of such agreement, the JCA shall specify the responsibilities of the respective parties for the processing activities as described below. Indemnification clauses shall ensure that the risk for certain data processing is borne by either one or multiple parties that have the primary interest in the processing.

Recommendation #14

Data Processing Roles & Responsibilities

The EPDP Team recommends that the policy includes the following data processing activities as well as responsible parties. Please reference the Initial Report, beginning on p. 63 for further details.

Recommendation #15

Updating other Consensus Policies

The EPDP Team recommends that for the new policy on gTLD registration data, the requirements of the Temporary Specification are maintained in relation to URS and UDRP until such time as these are superseded by recommendations from the RPMs PDP WG (if any).

Recommendation #16

Rights Protection PDP WG

The EPDP Team also 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.

Recommendation #17

UDRP/URS

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.

Recommendation #18

Data Processing Agreements

The EPDP Team recommends that ICANN Org must 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 to have publicly-available decisions.

Question #4

Are there any changes that the EPDP Team should consider in relation to the URS and UDRP that have not already been identified?

Recommendations #19, 20

- The EPDP Team recommends that for the new policy on gTLD registration data, the requirements of the Temporary Specification are maintained in relation to the Transfer Policy until such time these are superseded by recommendations that may come out of the Transfer Policy review that is being undertaken by the GNSO Council.
- 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.

Question #5: Are there any changes that the EPDP Team should consider in relation to the Transfer Policy that have not already been identified? If so, please provide the relevant rationale, keeping in mind compliance with the GDPR.

Recommendation #21

Joint Controller and Data Processing Agreements

The EPDP Team recommends that ICANN Org enters into required data protection agreements such as a Data Processing Agreement (GDPR Art. 28) or Joint Controller Agreement (Art. 26), as appropriate, with the non-Contracted Party entities involved in registration data processing such as data escrow providers and EBERO providers. These agreements are expected to set out the relationship obligations and instructions for data processing between the different parties.

Recommendation #22

Updates to Existing Consensus Policies

The EPDP Team recommends that as part of the implementation of these policy recommendations, updates are made to the following existing policies / procedures, and any others that may have been omitted, to ensure consistency with these policy recommendations as a number of these refer to administrative and/or technical contact which will no longer be required data elements:

- Registry Registration Data Directory Services Consistent Labeling and Display Policy
- Thick WHOIS Transition Policy for .COM, .NET, .JOBS
- Rules for Uniform Domain Name Dispute Resolution Policy
- WHOIS Data Reminder Policy
- Transfer Policy
- Uniform Rapid Suspension System (URS) Rules

THE END

Or is this just the beginning?