EPDP On the Temporary Specification for gTLD Registration Data - Public Comment Proceeding Input Form

* Required

1. Email address *

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Important Instructions - PLEASE READ BEFORE PROCEEDING

This Public Comment forum seeks community feedback on the Initial Report published by the Expedited Policy Development Process (EPDP) Team on the Temporary Specification for gTLD Registration Data.

This is a new format for collecting public comment. It seeks to:
-- Clearly link comments to specific sections of the initial report
-- Encourage commenters to provide reasoning or rationale for their opinions
-- Enable the sorting of comment so that the EPDP team can more easily read all the comments on any one topic

There is no obligation to complete all sections within this form – respond to as many or as few questions as desired. Additionally, there is the opportunity to provide comments on the general content of the Initial Report or on new issues not raised by the Initial Report. To preview all questions in the Google Form, please refer to a Word version of this form here [LINK TBD].

As you review the "Questions for Community Input" in the Initial Report, you will note that there is not a 1:1 correspondence with the questions asked in the Public Comment format. This is because, in some instances, the "Questions for Community Input" have been divided into multi-part questions so that feedback on these questions would be clear. The Initial Report and Comment Forum have been reviewed to ensure that all the "Questions for Community Input" have been addressed in this Comment Forum.

It is important that your comments include rationale (i.e., by answering the “rationale” question in each section). This is not a vote. The EPDP team is interested in your reasoning so that the conclusions reached and the issues discussed by the team can be tested against the reasoning of others. (This is much more helpful than comments that simply “agree” or “disagree”).

You can easily navigate from page to page in the form. There is a table of contents below so that you can “fast forward” to the desired section by hitting “next” at the bottom of each page. To preview this entire form in Word format, see, [LINK TBD]

To stop and save your work for later, you MUST (to avoid losing your work):

1. Provide your email address above in order to receive a copy of your submitted responses;

2. Click "Submit" at the end of the Google Form (the last question on every page allows you to quickly jump to the end of the Google Form to submit);

3. After you click "Submit," you will receive an email to the above-provided email address; within the email, click the "Edit Response" button at top of the email;

4. After you click the "Edit Response" button, you will be directed to the Google Form to return and complete;

5. Repeat the above steps 2-4 every time you wish to quit the form and save your progress.

NOTES:
-- Please refer to the specific recommendation and relevant section or page number of the Initial Report for additional details and context about each recommendation. Where applicable, you are encouraged to reference sections in the report for ease of the future review by the EPDP Team.

--Your comments should take into account scope of the EPDP as described by the Charter and General Data Protection Regulation (GDPR) compliance.

--For transparency purposes, all comments submitted to the Public Comment forum will be displayed publicly via an automatically-generated Google Spreadsheet. Email addresses provided by commenters will not be displayed.

--To maximize the visibility of your comments to the EPDP Team, please submit your comments via this form only. If you are unable to use this form, alternative arrangements can be made.

--The final date of the public comment proceeding is 23:59 UTC on 21 December 2018. Any comments received after that date will not be reviewed / discussed by the EPDP Team.

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Consent & Authorization

By submitting my personal data, I agree that my personal data will be processed in accordance with the ICANN Privacy Policy (https://www.icann.org/privacy/policy and agree to abide by the website Terms of Service (https://www.icann.org/privacy/tos).

2. Please provide your name: *

Alan Greenberg

3. Please provide your affiliation *

ALAC

4. **Are you providing input on behalf of another group (e.g., organization, company, government)?** *

Mark only one oval. (Please note you can highlight your choice.)

- ◯ Yes
- ◯ **No**

5. **If yes, please explain:**

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Save Your Progress

6. **Do you want to save your progress and quit for now? You will be able to return to the form to complete at a later time.**

Mark only one oval.

- ◯ Yes *Stop filling out this form.*
- ◯ No, I would like to continue to the next section

Section 3, Part 1: Purposes for Processing Registration Data

The EPDP team was tasked with determining whether the ICANN and Contracted Party Purposes for Processing Registration Data listed in the Temporary Specification are appropriate and if additional "Purposes" are required. The Team developed DNS requirements, the data requirements, and mapped data flows in order to identify these purposes.

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. For more information regarding the above, please refer to the Data Elements Workbooks which can be found in the Annex D of the Initial Report.

PURPOSE 1 FOR PROCESSING REGISTRATION DATA:

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

7. **Please choose your level of support for Purpose 1:**
Mark only one oval.

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

8. **If your response requires an edit or deletion of Purpose #1, please indicate the revised wording here (keep in mind that "Purposes" must be GDPR compliant).**

9. **Please provide rationale for your recommendation.**

PURPOSE 2 FOR PROCESSING REGISTRATION DATA

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 THE OTHER PURPOSES IDENTIFIED HEREIN

10. **Choose your level of support of Purpose #2:**
Mark only one oval.

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

11. **If your response requires an edit or deletion of Purpose #2, please indicate the revised wording here (keep in mind that "Purposes" must be GDPR compliant).**

12. **Please provide rationale for your recommendation.**

PURPOSE 3 FOR PROCESSING REGISTRATION DATA

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

13. **Choose your level of support of Purpose #3:**
    Mark only one oval.

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

14. **If your response requires an edit or deletion of Purpose #3, please indicate the revised wording here (keep in mind that "Purposes" must be GDPR compliant).**

15. **Please provide rationale for your recommendation.**

PURPOSE 4 FOR PROCESSING REGISTRATION DATA

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

16. **Choose your level of support of Purpose #4:**
Mark only one oval.

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

17. **If your response requires an edit or deletion of Purpose #4, please indicate the revised wording here (keep in mind that "Purposes" must be GDPR compliant).**

18. **Please provide rationale for your recommendation.**

PURPOSE 5 FOR PROCESSING REGISTRATION DATA

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

19. **Choose your level of support of Purpose #5:**
Mark only one oval.

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

20. **If your response requires an edit or deletion of Purpose #5, please indicate the revised wording here (keep in mind that "Purposes" must be GDPR compliant).**

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21. **~~Please provide the rationale for your recommendation.~~**

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PURPOSE 6 FOR PROCESSING REGISTRATION DATA

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.

22. **Choose your level of support of Purpose #6:**
Mark only one oval.

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

23. **If your response requires an edit or deletion of Purpose #6, please indicate the revised wording here (keep in mind that "Purposes" must be GDPR compliant).**

The parenthetical phrase “(AS OPPOSED TO THE USE OF SUCH DOMAIN NAMES) effectively nullifies the references the UDRP and the URS since both may use evidence of how a domain is being used. It is also counter to the related ICANN Bylaw provision in Annex G-1 where the wording Is “resolution of disputes regarding the registration of domain names (as opposed to the use of such domain names, but including where such policies take into account use of the domain names)”

A possible rewording might be: ”COORDINATE, OPERATIONALIZE, AND FACILITATE POLICIES FOR RESOLUTION OF DISPUTES REGARDING OR RELATING TO THE REGISTRATION OF 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. THE USE OF SUCH DOMAIN NAMES MAY NOT BE A CONSIDERATION UNLESS THE POLICY OR PROCESS TAKE INTO ACCOUNT USE OF THE DOMAIN NAMES.”

24. **Please provide rationale for your recommendation.**

The ALAC has no particular interest in Trade Mark issues per se. However, in many cases the intent of trademark abuse is to confuse or defraud an unsuspecting individual Internet user, and THAT is directly in the remit of At-Large and the ALAC. Therefore it is essential that policies and processes such as the URS and UDRP continue unimpeded by the GDPR implementation, to the utmost extent possible.

In relation to the URS, one of the reasons for the request for a rapid suspension of a website is offensive website content. According to section 1.2.4 of the URS the content of the complaint may include a copy of the offending portion of the website content. Section 3-IX of the UDRP says" the complaint should describe the grounds on which the complaint is made including in particular why the domain names should be considered as having been registered and being used in bad faith." and section 3-viii of the UDRP also refers to the usage of the domain name.

PURPOSE 7 FOR PROCESSING REGISTRATION DATA

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

25. **Choose your level of support of Purpose #7:**
Mark only one oval.

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

26. **If your response requires an edit or deletion of Purpose #7, please indicate the revised wording here (keep in mind that "Purposes" must be GDPR compliant).**

27. Please provide rationale for your recommendation.

28. Enter additional comments to Recommendation #1.

The ALAC sees that activities like the WHOIS Accuracy Reporting System (ARS) and the use of the WHOIS registration data by the office of the chief technology officer (OCTO) for training and outreach are not fulfilled through the aforementioned purposes. In addition ICANN needs to continuously advance its operational and administrative role in relation to the stability, reliability, and security of the Internet and to do so research is needed. Therefore ALAC recommends adding additional purposes that can address the aforementioned needs.

Question #1 for Community Input: Purposes for Processing Registration Data

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

1) ARS (Accuracy Reporting System)
2) The Office of the Chief Technology Officer (OCTO) research and threats analysis/prevention

30. For each additional purpose identified above, please enumerate and provide rationale for each of them.

Both of these are topics which are just starting to be discussed in the EPDP, but this will serve as an introduction:

ARS: The ARS was instituted in response to a recommendation of the WHOIS Review Team related to the accuracy of registration contact data. Studies had shown that there was a significant issue with data accuracy. Every 6 months (pre the Temp Spec) the ARS samples randomly selected gTLD registrations and tests the contact information for accuracy using a number of criteria. Those failing accuracy tests are passed to Contractual Compliance. In recent cycles, about 40% of all records samples have at least one contact entry that fails validation. Under the 2013 RAA, new registrations, those transferred to a new registrar, or those where there is a voluntary change of contact information must pass specific validation and verification test, but the vast majority of registrations have not been subject to such tests (an estimated 180,000,000). Under GDPR data must be accurate for the purpose under which it is processed. Purpose 2 and 6 both pass contact data to parties who have an expectation of accuracy and there is no way to understand whether this is being done without accuracy monitoring.

OCTO Research: ICANN is responsible for the DNS which includes fully understanding all aspects of it. Activities may include addressing DNS threats and potentially developing an evolution of it or a dissimilar replacement. To do that it needs to have access to all aspects of the DNS. If ICANN were a typical controller, it would have access to all of the data to begin with, and this would be covered under Recital 50 (secondary processing provisions), but since ICANN is not in possession of the data, we must make sure that it has suitable access.

Save Your Progress

31. Do you want to save your progress and quit for now? You will be able to return to the form to complete at a later time.

Mark only one oval.

- Yes *Stop filling out this form.*
- No, I wish to continue to the next section

Section 3, Part 1: Purposes for Processing Registration Data (Continued)

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.

32. Choose your level of support of Recommendation #2:

Mark only one oval.

- ◯ **Support recommendation as written**
- ◯ Support intent of recommendation with edits
- ◯ Intent and wording of this recommendation requires amendment
- ◯ Delete recommendation

33. Do you recommend a change to the wording of Recommendation 2? If so, please indicate proposed edits here.

34. Please include the rationale for your answers here.

35. **Enter additional comments for Recommendation #2.**

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.

36. **Choose your level of support of Recommendation #3:**
Mark only one oval.

- **Support recommendation as written**
- Support intent of recommendation with edits
- Intent and wording of this recommendation requires amendment
- Delete recommendation

37. **Do you recommend a change to Recommendation 3? If so, please indicate proposed edits here.**

38. **Please include the rationale for your answers here.**

39. **Enter any other additional comments or observations you have on Section 3 Part 1 that are not covered by these questions.**

Save Your Progress

40. Do you want to save your progress and quit for now? You will be able to return to the form to complete at a later time.

Mark only one oval.

- Yes *Stop filling out this form.*
- No, I wish to continue to the next section

Section 3, Part 2: Required Data Processing Activities

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

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
· 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**

Additional optional data elements as identified by Registry Operator in its registration policy, such as (i)

status as Registry Operator Affiliate or Trademark Licensee [.MICROSOFT]; (ii) membership in community [.ECO]; (iii) licensing, registration or appropriate permits (.PHARMACY, .LAW] place of domicile [.NYC]; (iv) business entity or activity [.BANK, .BOT]

Question #2 for Community Input

41. **Do you agree that all these data elements should be collected / generated to achieve the Purposes identified in the Initial Report?**

    Mark only one oval.

    - ◯ **Yes**
    - ◯ No

42. **If your answer is 'no', please enumerate which data elements should not be collected / generated.**

43. **Please provide the rationale for your answer.**

44. **If you believe additional data elements should be collected / generated, please enumerate which additional elements should be collected / generated.**

The elements that have been deleted related to Admin contacts should be reinstated pending a clear understanding on how the existing data in these fields (when it is unique to those fields) will be handled by registrars and registries. Registrant-provided data must not be unilaterally removed without due consultation with the data provider.

Moreover, under the 2009 RAA, which governs a very large number of registrations, there was no requirement to collect Registrant telephone or email. If the Admin field is eliminated, there may be NO contact information in the record (and in the escrowed records).

There must be a new field where the registrant must declare whether it is a natural or legal person. This fiuled must be collected regardless of whether it is used at this stage to determine what data is redacted.

45. **Please provide the rationale for your answer.**

Registrants have provided contact data in good faith and that data must be honoured by the Registrar/Registry. If it is to be changed, there must be process developed to ensure that the registrant agrees. To do otherwise is having the controller/processers alter registrant data without their approval and is counter to the intent of the GDPR. A registrant that has chosen to place administrative responsibilities with a specific person or entity must not have that changed unilaterally, and the ability to do so should not be unilaterally removed.

Without the Admin fields, there is the potential for a registration record having telephone or email contact details for the entity responsible for the registration.

A field identifying the natural/legal status of the registrant must be collected in light of the GDPR's reliance on this differentiation, and the likelihood that other jurisdictions may also treat the two differently.

Recommendation #4 Continued: Optional 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

46. Should the technical contact fields be optional or mandatory (where mandatory means the registrar must offer the fields AND the RNH must fill in information)?

Mark only one oval.

- ◯ Optional
- ◯ **Mandatory**

47. Please provide the rationale for your answer.

The answer depends on how the field will be handled when legitimate requests for the fields are addressed. If in the absence of information being provided by the registrant, some other contact information will be provided, the OPTIONAL is ok. If blank fields will be returned, then the answer here must be MANDATORY

To be clear, in version 2 of “optional” it is unclear what value would be returned if there is a lawful query for technical contact fields. That lack of clarity makes this question impossible to answer.

48. If your answer is 'optional', should registrars be required to offer these technical contact fields?

Mark only one oval.

- ◯ **Yes**
- ◯ No

49. Please provide the rationale for your answer.

All registrant should be given the option of providing the data. The concept that if a registrant wants to provide this data, they need to look around for a registrar that allows its entry is ridiculous. Registering a domain name and they taking care of it is a sufficiently complicated task that adding a “search” part of the process, when a potential registrant does not even know that the field exists or may not exist for a given registrar adds a level of complexity that would be difficult to document and deceptive to not ensure that a registrant understands their options.

50. **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?**
Mark only one oval.

- ( ) Yes
- ( ) **No**

51. **Please provide the rationale for your answer.**

See answer #44 for Admin contacts.

Billing contacts are not part of the public WHOIS and the ALAC has no concern what is done with them.

52. **Enter additional comments for Recommendation #4 here.**

Recommendation #5: Transmission of Data from Registrar to Registry

The EPDP Team recommends 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. 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.

53. **Do you agree that all these data elements should be transferred from the registrar to the registry?**
Mark only one oval.

- ( ) **Yes**
- ( ) No

54. **If your answer is 'no', please enumerate which data elements should not be transferred from the registrar to the registry.**

55. **Please provide the rationale for your answer.**

56. **Enter additional comments for Recommendation #5 here.**

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 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).

57. **Choose your level of support of Recommendation #6:**
Mark only one oval.

- **Support recommendation as written**
- Support intent of recommendation with edits
- Intent and wording of this recommendation requires amendment
- Delete recommendation

58. **If your response requires an edit or deletion of Recommendation #6, please indicate the revised wording here. Additionally, please enumerate which data elements should not be transferred from the registrar/registry to the data escrow provider.**

59. **Please provide the rationale for your answer.**

60. **Enter additional comments for Recommendation #6 here.**

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).

61. **Choose your level of support of Recommendation #7:**
Mark only one oval.

- ◯ Support recommendation as written
- ◯ Support intent of recommendation with edits
- ◯ **Intent and wording of this recommendation requires amendment**
- ◯ Delete recommendation

62. **Do you agree that all of these data elements should be transferred from the registrar to ICANN?**
Mark only one oval.

- ◯ **Yes**
- ◯ No

63. **If your answer is 'no', please enumerate which data elements should not be transferred from the registrar to ICANN.**

64. **Please provide the rationale for your answer.**

65. **Enter additional comments for Recommendation #7 here.**

It is unclear if the wording needs to be changed, but the ultimate result must be that Compliance has immediate access to registration data without having to make an explicit request and wait for reply.

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.

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

REDACTED
Registrant Fields
- Name

- Street
- City
- Postal code
- Phone
- Email

Tech Fields
- Name
- Phone
- Email

UNDECIDED (REDACTED/ NOT REDACTED)
- Organization (opt.)

Please reference page 14-15 of the Initial Report for details of the data elements.

66. Do you agree that all of these data elements should be redacted?

Mark only one oval.

- ◯ **Yes**
- ◯ No

67. If your answer is 'no', please enumerate the data elements that should not be redacted.

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68. Please provide the rationale for your answer.

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69. The EPDP Team is of divided opinion as to whether "Organization" should be redacted for reasons stated in the Initial Report. Please see the Initial Report, beginning on p. 42. Should the "Organization" field be redacted?

Mark only one oval.

- ◯ Yes
- ◯ **No**

70. **Please provide rationale for your answer above.**

There are a number of reasons it should not be redacted.
- For web sites (and other Internet resources) that are nominally commercial, Internet users should have SOME ability to know who is behind it (or if it is being hidden by Privacy/Proxy). Without the Organization field, there is NOTHING.
- The Temp Spec has required the Organization filed to be displayed and there has not been any evident major issue about it.
- It is an OPTIONAL field to fill in and Registrants can be warned that it will be displayed if filled in. So there is no reason to NOT display it.

71. **Enter additional comments for Recommendation #8.**

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).

72. **Choose your level of support of Recommendation #9:**
Mark only one oval.

- **Support recommendation as written**
- Support intent of recommendation with edits
- Intent and wording of this recommendation requires amendment
- Delete recommendation

73. **If your response requires an edit or deletion of Recommendation #9, please indicate the revised wording here.**

74. **Please provide the rationale for your answer.**

75. **Additional comments for Recommendation #9.**

Recommendation #10: Provision of Email Address/Web Form

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.

76. **Choose your level of support of Recommendation #10:**

Mark only one oval.

- Support recommendation as written
- Support intent of recommendation with edits
- Intent and wording of this recommendation requires amendment
- Delete recommendation

77. **If you believe edits are needed for Recommendation #10, please propose edits here.**

…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 remain in place, and that the requirement that Registrar MUST NOT identify the contact email address or the contact itself be subject to the registrant being given an option to consent to the allow the information to be publicly published/displayed.

78. **Please provide the rationale for your answer.**

A registrant that wishes to display their contact information, should be allowed to do so.

79. **Additional comments for Recommendation #10.**

Recommendation #11: Data Retention

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").

80. Choose your level of support of Recommendation #11:

Mark only one oval.

- **Support recommendation as written**
- Support intent of recommendation with edits
- Intent and wording of this recommendation requires amendment
- Delete recommendation

81. If you do not support Recommendation #11, please provide proposed edits here.

82. Please provide the rationale for your answer.

83. Additional comments for Recommendation #11.

Question 3 for Community Input: Differentiating Registrants: Legal v. Natural Persons; and Effects of Geographic Location

84. **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.**

85. **Please provide the rationale for your above answer.**

86. **Are there any other risks associated with differentiation of registrants on a geographic basis? If so, please identify those factors and/or risks and how they would affect possible recommendations, keeping in mind compliance with the GDPR.**

There are risks associated with NOT differentiating registrants on a geographic basis. Under GDPR registrar who operated solely outside of the EU and does not explicitly target potential registrants within the EU is not subject to GDPR. Cybersecurity professional have effectively used registration data to combat Internet security issues. The more information that is redacted, the more these cybersecurity professionals are crippled in their efforts.

It is known that certain contracted parties have welcomed those who register domains for abusive uses. Allowing those contracted parties outside of the EU to redact all information give the domain name abusers free reign.

Note that a new guidance document from the EDPB makes it clear that an entity wholly external to the EU that does not explicitly target customers within the EU is NOT subject to GDPR, even if some customers in the EU happen to utilize their services.

87. **What other factors should the EPDP team consider about whether Contracted Parties should be permitted or required to differentiate between natural and legal persons?**

The ALAC strongly supports differentiation of Legal and Natural Persons. GDPR only applies to Legal Persons. Although a Legal Person's registration data may contain personal information, as per EDPB recommendations, they should be advised to take care to ensure that they are not doing so without due authorization.

88. **Please provide the rationale for your above answer.**

The risks listed in reply to #86 apply here as well. If there are particular risks associated with treating specific classes of legal persons as described here, they need to explicitly enumerated with carve-outs.

89. **Should there be further study as to whether 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.**

The ALAC does not believe that further study is needed, but is willing to consider rationale's provided by others.

90. **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:

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

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

91. **Choose your level of support of Recommendation #12:**
Mark only one oval.

- ◯ Support recommendation as written
- ◯ Support intent of recommendation with edits
- ◯ Intent and wording of this recommendation requires amendment
- ◯ Delete recommendation

92. **If you believe edits are needed for Recommendation #12, please propose them here.**

ANSWER TO BE DETERMINED: It is unclear what the ALTERNATIVE is to continuing to use the current methodology.

93. **Please provide the rationale for your answer.**

94. **Additional comments for Recommendation #12.**

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.

95. **Choose your level of support of Recommendation #13:**
Mark only one oval.

- ◯ Support recommendation as written
- ◯ Support intent of recommendation with edits
- ◯ Intent and wording of this recommendation requires amendment
- ◯ Delete recommendation

96. **If you believe changes are needed for Recommendation #13, please provide proposed edits here.**

97. **Please provide the rationale for your answer.**

98. **Additional comments for Recommendation #13.**

99. **Enter any other additional comments or observations you have on Section 3, Part 2 that are not covered by these questions.**

Save Your Progress

100. **Do you want to save your progress and quit for now? You will be able to return to the form to complete at a later time.**

Mark only one oval.

- Yes *Stop filling out this form.*
- No, I wish to continue to the next section

Section 3, Part 3: Data Processing Terms

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.

101. Choose your level of support of Recommendation #14:

Mark only one oval.

- ◯ Support recommendation as written
- ◯ Support intent of recommendation with edits
- ◯ Intent and wording of this recommendation requires amendment
- ◯ Delete recommendation

102. If you do not agree with the enumerated data processing activities and responsible parties, please provide proposed edits, including specific processing activities that need to be added/deleted here. The EPDP team particularly seeks feedback with the assignment of roles such as: "joint-controller," "controller," and "processor.

103. Please provide your rationale for the proposed addition/deletion.

104. Additional comments for Recommendation #14.

Save Your Progress

105. **Do you want to save your progress and quit for now? You will be able to return to the form to complete at a later time.**

Mark only one oval.

- ◯ Yes *Stop filling out this form.*
- ◯ No, I wish to continue to the next section

Section 3, Part 4: Updates to Other Consensus Policies

106. **Enter any general comments or observations you may have on the findings in Section 3, Part 4.**

Recommendation #15: Uniform Rapid Suspension/Uniform Domain Name Dispute Resolution Policy Requirements

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).

107. **Choose your level of support of Recommendation #15:**

Mark only one oval.

- ◯ **Support recommendation as written**
- ◯ Support intent of recommendation with edits
- ◯ Intent and wording of this recommendation requires amendment
- ◯ Delete recommendation

108. **If you do not agree that the current updated requirements in the UDRP and URS, as provided in the Temporary Specification should remain in place, please provide proposed edits to the current requirements.**

109. Please provide the rationale, keeping in mind compliance with GDPR.

110. Additional comments for Recommendation #15.

Recommendation #16: Instruction to GNSO and Rights Protection Mechanisms Policy Development Working Group

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.

111. Choose your level of support of Recommendation #16:

Mark only one oval.

- **Support recommendation as written**
- Support intent of recommendation with edits
- Intent and wording of this recommendation requires amendment
- Delete recommendation

112. If you do not support Recommendation #16, please provide proposed text/edits.

113. **Please provide the rationale for your answer.**

114. **Provide additional comments for Recommendation #16 here.**

This answer is subject to the need to verify if deferring to the other PDP will cause undue delay.

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.

115. **Choose your level of support of Recommendation #17:**
Mark only one oval.

- **Support recommendation as written**
- Support intent of recommendation with edits
- Intent and wording of this recommendation requires amendment
- Delete recommendation

116. **If you do not support Recommendation #17, please provide proposed edits or changes.**

117. **Please provide the rationale for your answer.**

118. Provide additional comments for Recommendation #17 here.

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.

119. Choose your level of support of Recommendation #18:

Mark only one oval.

- **Support recommendation as written**
- Support intent of recommendation with edits
- Intent and wording of this recommendation requires amendment
- Delete recommendation

120. If you do not agree to Recommendation #18, please provide proposed edits or changes here.

121. Please provide the rationale for your answer here.

122. Provide additional comments for Recommendation #18 here.

Question #4 for Community Input

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

124. If so, please provide the relevant rationale, keeping in mind compliance with the GDPR.

Recommendation #19: Transfer Policy

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.

125. Choose your level of support of Recommendation #19:

Mark only one oval.

- **Support recommendation as written**
- Support intent of recommendation with edits
- Intent and wording of this recommendation requires amendment
- Delete recommendation

126. If you do not support Recommendation #19, please provide proposed changes/edits here.

127. Please provide the rationale for your answer, keeping in mind compliance with GDPR.

128. Provide additional comments for Recommendation #19 here.

Recommendation #20: Transfer Policy

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.

129. Choose your level of support of Recommendation #20:

Mark only one oval.

- **Support recommendation as written**
- Support intent of recommendation with edits
- Intent and wording of this recommendation requires amendment
- Delete recommendation

130. If you do not support Recommendation #20, please provide proposed edits/changes here.

131. Please provide the rationale for your answer here.

132. **Provide additional comments for Recommendation #20 here.**

Question #5 for Community Input

133. **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.**

134. **Enter any other additional comments or observations you have on Section 3, Part 3 that are not covered by these questions.**

The ALAC is concerned that problems may arise as time progresses due to the changes in the process of transfers. The EPDP should recommend that transfer and hijacking complaints be carefully and regularly monitored to ensure that such problems are well understood, with a commitment to rectification if there is an increase in transfer related problems.

Save Your Progress

135. **Do you want to save your progress and quit for now? You will be able to return to the form to complete at a later time.**

Mark only one oval.

- ◯ Yes *Stop filling out this form.*
- ◯ No, I wish to continue to the next section

Section 3: Other Recommendations

136. **Enter any general comments or observations you may have on the findings in Section 3, Other Recommendation.**

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.

137. **Choose your level of support of Recommendation #21:**
Mark only one oval.

- ◯ Support recommendation as written
- ◯ Support intent of recommendation with edits
- ◯ Intent and wording of this recommendation requires amendment
- ◯ Delete recommendation

138. **If you do not support Recommendation #21, please provide proposed edits/changes here.**

139. **Please provide the rationale for your answer here, keeping in mind compliance with GDPR.**

140. Provide additional comments for Recommendation #21 here.

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

Please reference the Initial Report, beginning on p. 71 for further details.

141. Choose your level of support of Recommendation #22:

Mark only one oval.

- Support recommendation as written
- Support intent of recommendation with edits
- Intent and wording of this recommendation requires amendment
- Delete recommendation

142. If you do not support Recommendation #22, please provide proposed edits or changes here.

143. Please provide the rationale for your answer here.

144. **Provide additional comments on Recommendation #22 here.**

145. **Enter any other additional comments or observations you have on Section 3: Other Recommendations that are not covered by these questions.**

The ALAC would like to note that migration from thin to thick registries should be respected and that the registrars and registry operator of .COM, .NET and .JOBS should comply with the announcement made by ICANN on 25 October 2018 which states that

- **By 31 May 2019: The registry operator must begin accepting Thick WHOIS data from registrars for existing registrations in .COM, .NET and .JOBS.**
- **By 30 November 2019: All registrars must send Thick WHOIS data to the registry operator for all new registrations in .COM, .NET and .JOBS.**
- **By 31 May 2020: All registrars are required to complete the transition to Thick WHOIS data for all registrations in .COM, .NET and .JOBS.**

The vast majority of gTLDs are thick, and unless ICANN will take action to change all of these to thin, the results of the Thick WHOIS PDP must be honoured.

Save Your Progress

146. **Do you want to save your progress and quit for now? You will be able to return to the form to complete at a later time.**

Mark only one oval.

- ◯ Yes *Stop filling out this form.*
- ◯ No, I wish to continue to the next section

Other Comments & Submission

147. **Are there any other comments or issues you would like to raise pertaining to the Initial Report? If yes, please enter your comments here. If applicable, please specify the section or page number in the Initial Report to which your comments refer.**

With regard to recommendation # 2 Standardized Access the ALAC would like to note that since this initial report attempts to answer the gating questions necessary to start access discussions it is essential that the EPDP team establishes a date for the discussions about access to commence.

The ALAC notes that although the efforts of this EPDP are focused on compliance with the EU GDPR, other privacy (and disclosure legislation and regulations exist in other jurisdictions. Some may be comparable to the GDPR, some more stringent, and some less so. Ultimately contracted parties must all be able to obey regulations that apply to them based on their geo-location and potentially that of their customers. This will inevitably imply that "one-size-fits-all" solutions will not be feasible in the general case, and we will have to move to rules-based (table-driven) algorithms to address privacy and disclosure issues.

The ALAC also notes that there has been significant discussion within the EPDP regarding risks to the contracted parties. There has been very little discussion related to risks to the Internet and to individual Internet users caused by the wholesale redaction of registration data. Privacy of registrant data is of course a significant consideration, but the privacy of Internet users who fall prey to a variety of fraud including phishing resulting in identity theft must also be considered.

Save Your Progress

A copy of your responses will be emailed to the address you provided