

“Triage” Report: Expedited Policy Development Process for gTLD Registration Data

Executive Summary

The first deliverable of the EPDP Team is a “triage” document of the Temporary Specification, which includes items that have the Full Consensus support of the EPDP Team: that these should be adopted as is (with no further discussion or modifications needed). (See the EPDP Charter at <https://gnso.icann.org/sites/default/files/file/field-file-attach/temp-spec-gtld-rd-epdp-19jul18-en.pdf>.)

Based on the results of a section-by-section survey completed by the EPDP Team, there are very few areas where the consensus opinion of the EPDP Team agrees with the current language in the Temporary Specification. There were several areas of agreement with the underlying principles in several sections of the Temporary Specification (e.g., data redaction). However, where a constituency / stakeholder group / advisory committee did indicate support for a certain section of the Temporary Specification, edits were often suggested, meaning that essentially no section of the Temporary Specification will be adopted without modifications.

That does not mean that this Triage report and the surveys and discussion that formed the basis for the report are without value. There are several takeaways that will inform the EPDP Team’s work on the Initial Report:

1. Several comments made by the Team members indicated how the sections should be ordered for the next round of discussion; this should serve as a basis for a more efficient discussion going forward.
2. The rationale provided by Team members in support / opposition of each section can be used in some cases to narrow the discussion to particular issues. Similarly, specific suggestions were made in some cases for how sections could be modified, which could form a basis for further deliberation.
3. The Team now has a library of each group’s positions on and issues with a variety of topics.

Major themes that were raised during the discussion include:

1. The Temporary Specification is “GDPR-centric” and its successor should take into account or make allowance for emerging privacy regulations in other jurisdictions.
2. The effect of GDPR compliance requirements on entities outside the EEA requires better understanding and handling.
3. The Temporary Specification refers to “processing” data but, to be clear, the successor specification should consider further delineating among the different processing options such as collection, use and disclosure

“Triage” Report: Expedited Policy Development for Registration Data and GDPR

- 4. There is some confusion regarding the transition from a temporary specification to its replacement and the effect of that on time-sensitive sections of the Temporary Specification: e.g., the implementation date, reference to an Interim model and other clauses that would not belong in the replacement specification.
- 5. Recent and ongoing advice received from EDPB will cause the team to reconsider the language in Section 4.4 et. seq., the purposes for processing data.
- 6. Some sections are considered too prescriptive where actual implementation depends on business model, evolving GDPR interpretation and privacy regimes in other jurisdictions. Compliance with GDPR will differ among data controllers.
- 7. There is a difference among registration data (Whois data), data used to register domains and zone file data. The successor specification should recognize that distinction and deal with them appropriately.
- 8. ICANN relies on its mission and bylaws to justify the requirement that registration data be disclosed in certain circumstances, but the EPDP team seeks supplemental information from ICANN to make it clear why the mission and bylaws make such disclosures necessary.

Contents

What follow is:

A statement of the report requirement 3

A brief description of the methodology for compiling information for this report 3

A summary chart indicating which teams supported individual Temporary Specification sections 4

A section-by-section report including a summary of issues raised by the team 5

APPENDIX: A section-by-section report including a summary of issues raised by the team as well as the written comment of each constituency / stakeholder group / advisory committee 9

“Triage” Report: Expedited Policy Development for Registration Data and GDPR

The requirement from the EPDP Team Charter

(see, <https://gns0.icann.org/sites/default/files/file/field-file-attach/temp-spec-gtld-rd-epdp-19jul18-en.pdf>)

The first deliverable of the EPDP Team shall be a triage document of the Temporary Specification, which includes items that have the Full Consensus support of the EPDP Team that these should be adopted as is (with no further discussion or modifications needed). These items need to be:

1. In the body of the Temporary Specification (not in the Annex)
2. Within the "picket fence" (per limitations on Consensus Policy as set out in the Contracts)
3. Not obviously in violation of the GDPR / Assumed to be compliant with GDPR [Presumed to be legal according to the members’ best knowledge of GDPR]
4. Consistent with ICANN’s Bylaws

A brief description of the methodology for compiling information for this report

The EPDP Team members completed a survey that, on a section-by-section basis of the Temporary Specification, indicated whether they:

1. agreed with the section as written
2. disagreed with the section as written
3. had no strong opinion

Implementation notes:

1. Some similar sections were combined in the survey for efficiency.
2. Each constituency / stakeholder group / advisory committee completed one survey.
3. The survey sections were divided into four separate surveys so that first inputs could be received and reviews could begin sooner.

Each constituency / stakeholder group / advisory committee was then asked to provide rationale or reasoning for their opinion, at least in cases where they disagreed with the language. They were afforded the opportunity to suggest alternate language.

The EPDP Leadership and Support team reviewed the responses and rationale, and created an “issue summary” for each survey section. The issue summaries and the text of each of the responses were published prior to each Team meeting. During EPDP Team meetings the comments and issue summaries were reviewed to ensure written comments were correctly understood. The EPDP Team was also furnished with a summary chart (see below) indicating which teams supported individual Temporary Specification sections.

After the first meeting, it was realized there would be few areas of consensus that sections were supported as written so it was decided to not spend time attempting to reach consensus on any section during the triage stage.

“Triage” Report: Expedited Policy Development for Registration Data and GDPR

A summary chart indicating which teams supported individual Temporary Specification sections

Acknowledging that consensus is not achieved by vote, it is instructive to graphically portray when the groups agreed (or not) with each report section.

	IPC	GAC	NCSG	RrSG	ISPCP	BC	ALAC	RySG	SSAC
Sections 1.1., 1.2., 1.3.	Yes	Yes	No	Yes	No	Yes	Yes	No	Yes
Section 2.	Yes	Yes	Yes	No	Yes	Yes	Yes	No	Yes
Section 3.	Yes	Yes	Yes	NSO	No	Yes	Yes	No	NSO
Sections 4., 4.1., 4.2.	Yes	Yes	No	No	No	Yes	Yes	No	Yes
Section 4.3.	Yes	Yes	No	No	No	Yes	Yes	No	Yes
Section 4.4., 4.4.1.	No	No	Yes	No	Yes	Yes	Yes	No	Yes
Section 4.4.2.	Yes	Yes	No	No	No	Yes	Yes	No	Yes
Section 4.4.3.	Yes	Yes	NSO	No	No	Yes	Yes	No	Yes
Section 4.4.4.	Yes	Yes	Yes	No	No	Yes	Yes	No	Yes
Section 4.4.5.	Yes	Yes	No	No	No	Yes	Yes	No	Yes
Section 4.4.6.	Yes	Yes	No	No	No	Yes	Yes	No	Yes
Section 4.4.7.	Yes	Yes	Yes	No	No	Yes	Yes	No	Yes
Section 4.4.8.	Yes	No	NSO	No	No	Yes	Yes	No	Yes
Section 4.4.9.	Yes	No	Yes	NSO	No	Yes	Yes	No	Yes
Section 4.4.10.	Yes	Yes	Yes	No	No	Yes	Yes	No	Yes
Section 4.4.11.	Yes	Yes	Yes	No	Yes	Yes	Yes	No	Yes
Section 4.4.12.	Yes	Yes	Yes	NSO	Yes	Yes	Yes	No	Yes
Section 4.4.13.	No	Yes	Yes	No	No	Yes	Yes	No	Yes
Section 4.5., 4.5.1. - 4.5.5.	Yes	Yes	No	No	No	Yes	No	No	Yes
Appendix A 1.-1.2.2.	Yes	No	NSO	No	No	Yes	Yes	No	Yes
Appendix A 2., 2.1. - 2.3.	No	No	Yes	No	No	No	No	No	No
Appendix A 2.4 - 2.6.	No	No	Yes	No	No	No	Yes	No	No
Appendix A 3.	No	No	NSO	No	Yes	No	Yes	Yes	No
Appendix A 4., 4.1., 4.2.	Yes	No	Yes	Yes	No	Yes	Yes	Yes	No
Appendix A 5.	Yes	Yes	NSO	Yes	Yes	Yes	NSO	No	Yes

Any such chart requires explanation.

1. Importantly, there was often agreement on broad principles, but those areas of agreement are hidden in this chart where the combination of sections into one line item or suggested minor edits resulted in “not supporting the language as written.”
2. The Registry Stakeholder Group thought the Temporary Specification should be revisited given recent correspondence from the European Data Privacy Board and the effect that has had on preconceived notions of compliance vs. non-compliance.
3. The Intellectual Property and Business Constituencies and the At-Large Advisory Committee, when agreeing with a section, often proposed revised wording.
4. The Registry Stakeholder Group, when disagreeing with a section, often voiced general agreement but with certain changes recommended.

Therefore, the color-coding is not precisely or well-correlated to the degree of support.

“Triage” Report: Expedited Policy Development for Registration Data and GDPR

A section-by-section report including a summary of issues raised by the team

Section 1, Scope: The bolded part of the following section is considered problematic: “To the extent there is a conflict between the requirements of this Temporary Specification and the requirements of Registry Operator's Registry Agreement and Registrar's Registrar Accreditation Agreement, the terms of this Temporary Specification SHALL control, ***unless ICANN determines in its reasonable discretion that this Temporary Specification SHALL NOT control.***”

1. Why was this term included – conflicts yet to be discovered? Future changes in GDPR implementation advice? Some reason germane only to the Temporary Specification and not its successor?
2. Should the team consider its deletion as it re-writes the specification?

Section 2, Definitions: Definitions might change in the successor specification.

1. Is reference to the "Interim model" necessary?
2. Should "Registration Data" be defined with more specificity?

Section 3: Policy Effective Date: Should the effective date of the Temporary Specification be replaced by the effective date of its successor, i.e., the date of ICANN Board approval?

Sections 4.1-4.3, Lawfulness & Purposes of Processing gTLD Registration Data

1. Do ICANN's Bylaws and its role described in the Temporary Specification extend beyond ICANN's remit?
2. Do the ICANN Bylaws and Mission provide the necessary authority to justify its role to mandate personal data processing (i.e., collection, use and disclosure) as described in the Temporary Specification?
3. Should these introductory sections be re-examined *after* the analysis of the sections 4.4 et. seq. is completed by the EPDP Team and so that potential changes to those sections can be taken into account?
 1. I.e., is it more important to first determine when the purposes, the uses & disclosure of data are legitimate and not overridden by fundamental rights as laid out in the GDPR?
 2. Are these paragraphs relevant to the purpose of the Temporary Specification or can they be published outside it?

Section 4.4, 4.4.1-4.4.2, Lawfulness & Purposes of Processing gTLD Registration Data:

1. Section 4.4, a preamble to the list of purposes for which personal data can be processed states that data can be disclosed, "... for only the following legitimate purposes." Does this unnecessarily limit the Temporary Specification as additional legitimate uses of data are determined or new privacy regimes are introduced in future years?

“Triage” Report: Expedited Policy Development for Registration Data and GDPR

2. Section 4.4.2 seems to be a catchall provision that cures the issue created by "... for only the following legitimate purposes," by allowing any data disclosure purpose when legitimate and not overridden by fundamental rights. Is that the purpose of this provision? Would it be better form to replace 4.4.2 with language in the preamble (sec 4.4) that indicates other legitimate purposes in the future are possible?
3. Does section 4.4.1 adequately test data requests against the rights of individuals and the need to narrowly tailor personal data disclosures to the "necessity"?
4. GDPR indicates that LEA access to personal data needn't pass the test that data requests can be disclosed only when legitimate and not overridden by fundamental rights. Should the preamble in sec 4.4 refer to Art.6 of the GDPR as exempting LEA access from the requirement?

Section 4.4.3, for contacting registrants: In reference to the clause that registration data provides a mechanism for “identifying and contacting” registrants, registrars indicate that they use registration data only to “contact” registrants, not "identify" them. Should “identify” be deleted?

Section 4.4.4, for communication & invoicing: In reference to the clause that registration data provides a mechanism for communication and invoicing, registrars indicate they do not use registration data for this purpose. Should this clause be struck?

Section 4.4.5, to address technical and content issues: In reference to the clause that registration data provides a mechanism for technical issues, errors, or content or resources associated with a registered name:

1. What are the types of "content" issues should be allowable or disallowed as part of this section”?
2. What is the actual flow of data requests: i.e., the registrars’ role and the actual use of registration data in these types of requests?

Section 4.4.6, to address changes to the domain:

1. In reference to the clause that registration data provides a mechanism for communication about commercial or technical changes to the domain, registrars indicate they do not use registration data for this purpose. Should this clause be struck?
2. The clause also indicates that registries have the same reason for contacting registrants. Does this require registration data?

Section 4.4.7, regarding the voluntary provision of administrative and technical contact data:

1. Does the utility of this voluntary data submission outweigh the requirement for data minimization?

“Triage” Report: Expedited Policy Development for Registration Data and GDPR

2. Can consent be obtained from administrative and technical contacts where no direct relationship exists?

Section 4.4.8, to combat abuse and protect intellectual property: It was noted that this section is too broadly written and additional detail is required to govern this area. Is the list of purposes for data disclosure (i.e., DNS Abuse, cybercrime and intellectual property theft) consistent with ICANN’s mission?

Section 4.4.9, to provide LEA access: There was a statement made that LEA access to personal data needn't pass the balancing test of Article 6(1)(f) – that data can be disclosed when considered legitimate and not overridden by fundamental rights.

1. Should the preamble (section 4.4) refer to Art.6 of the GDPR?
2. Must LEAs demonstrate the right to access data?

Section 4.4.10, zone-file data: Zone-file data is considered part of registration data as it is generated automatically and not provided by the registrant. Should this section, in a document governing the processing of registration data, be deleted?

Section 4.4.11, to address business or technical failure: In reference to the clause that registration data provides a mechanism for safeguarding registration data in the “event of a business or technical failure, or other unavailability of a Registrar or Registry Operator”:

1. Is it accurate to say there is general approval of this data use so long as ICANN does not have access to the registration data?
2. Should “other unavailability” be deleted as redundant or vague?

Section 4.4.12, to facilitate dispute resolution services: There appears to be support for this section.

Section 4.4.13, to facilitate contractual compliance: Regarding ICANN access to data for contractual compliance purposes, should ICANN be required to provide details to identify specific data that are needed for specifically identified compliance tasks?

Section 4.5.1-4.5.5, Rationale for Processing gTLD Registration Data: For this rationale supporting the specified purposes for data processing that are permitted under this specification, those not supporting this provision found the rationale unconvincing.

1. Is this rationale necessary to this specification or should it be published outside it?
2. Would this section be more effectively reviewed after the review of data processing purposes in section 4.1. et.seq.?

“Triage” Report: Expedited Policy Development for Registration Data and GDPR

Appendix A.1: Registration Data Directory Services

1. All parties agree that RDAP will be implemented. Should the date for SLA definition (31 July 2018) be deleted or amended since it has passed? Will any date be germane in the successor document?
2. There is some uncertainty as to whether a search capability is / should be a contractual requirement. Is the Search Capability paragraph (which places GDPR-required restrictions on the use of search) necessary?
3. Do the restrictions in this section address the risks associated with the aggregation of data?

Appendix A, Registration Data Directory Services – sections 2.1, 3:

1. Is section 2.1 (coupled with sec. 3) is overly broad in that: (1) GDPR data restrictions can be applied globally and include entities (registrars, registries, registrant) located outside the EEA, and (2) data restrictions need not be applied to Legal persons where personal data is not included in the record? Or is it appropriately written given that the legal/natural distinctions cannot be made a priori and attempting to distinguish these differences is not implementable? What are the operational / implementation issues for registrars?
2. Should “thin” registries should be required to move to “thick” as part of this Temporary Specification?

Appendix A section 2.2: Why is the date for privacy language implementation delayed until RDAP implementation? Can it be required sooner?

Appendix A section 2.3: Should data in addition to what is specified in the Temporary Specification be redacted (e.g., organization name, city, postal code) as personal information can be gained from them? The Temporary Specification mentions "consent" without a requirement or specification for such. Should this group take that up?

Appendix A section 4: While parties generally support this section:

1. What is meant by "reasonable" access? Should “reasonable” be deleted?
2. There is concern that individual decisions or rulings will be construed as rules of law and be implemented haphazardly by registrars. Instead, should case law be interpreted and used to make a single rule-set for all registrars?
3. Should this section be placed under sec 4.4 as is it applies to the "access" issue?

Appendix A section 5: There is strong support for the publication of additional data fields:

1. Should there should be some measure of standardization of the output?
2. Is inclusion of Appendix C problematic and should the team revisit this language when Appendix C is reviewed?

TRIAGE APPENDIX

A section-by-section report including a summary of issues raised by the team as well as the written comment of each constituency / stakeholder group / advisory committee

	Issue Summarization	Alex Deacon and Diane Plaut	Ashley Heineman	Amr Elasad	Mat Serlin	Thomas Rickert	Mark Scaconek	Hadia Elmihawi	Kristina Rosette	Greg Aaron, for Ben Butler and Rod Rasmussen
Section 1 - Scope	1.1. Terms used in this Temporary Specification are defined in Section 1.2. This Temporary Specification applies to all gTLD Registry Operators and ICANN-accredited Registrars. 1.3. The requirements of this Temporary Specification supersede and replace the requirements contained in Registry Operator's Registry Agreement and Registrar's Registrar Accreditation Agreement regarding the matters contained in this Temporary Specification. To the extent there is a conflict between the requirements of this Temporary Specification and the requirements of Registry Operator's Registry Agreement and Registrar's Registrar Accreditation Agreement, the terms of this Temporary Specification SHALL control, unless ICANN determines in its reasonable discretion that this Temporary Specification SHALL NOT control. For purposes of clarity, unless specifically addressed and modified by this Temporary Specification, all other requirements and obligations within Registry Operator's Registry Agreement and Registrar's Registrar Accreditation Agreement and consensus policies remain applicable and in force.	Yes	Yes	Yes	Yes	No	Yes	Yes	No	Yes
Section 2 - Definitions and Interpretation	The terms "MAY," "MUST," "MUST NOT," "REQUIRED," "RECOMMENDED," "SHALL," "SHALL NOT," "SHOULD NOT" and "SHOULD" are used to indicate the requirement level in accordance with RFC2119, which is available at http://www.ietf.org/rfc/rfc2119.txt . "Consent," "Controller," "Personal Data," "Processing," and "Processor" SHALL have the same definition as Article 4 of the GDPR. "gTLD" SHALL have the meaning given in the Registrar Accreditation Agreement. "Interim Model" means the Interim Model for Compliance with ICANN Agreements and Policies in Relation to the European Union's General Data Protection Regulation published at https://www.icann.org/en/system/files/files/gdpr-compliance-interim-model-08mar18-en.pdf (PDF, 922 KB) and as may be amended from time to time. "Registered Name" SHALL have the meaning given in the Registrar Accreditation Agreement. "Registered Name Holder" SHALL have the meaning given in the Registrar Accreditation Agreement. "Registrar Accreditation Agreement" means any Registrar Accreditation Agreement between a Registrar and ICANN that is based on that certain 2013 Registrar Accreditation Agreement approved by the ICANN Board on June 27, 2013 ("2013 Registrar Accreditation Agreement") or any successor to such	Yes	Yes	Yes	No	Yes	Yes	Yes	No	Yes
Section 3 - Policy Effective Date	This Temporary Specification is effective as of 25 May 2018. If we are writing the replacement for the Temporary Specification, this date will not appear in the next version. (What is the precise expiration date?)	Yes	Yes	Yes	No strong opinion	No	Yes	Yes	No	No strong opinion
Section 4 - Lawfulness and Purpose of Processing (TLD Registration Data)	4.1. ICANN's mission, as set forth in Bylaws Section 1.1(a), is to "coordinate the stable operation of the Internet's unique identifier systems." Section 1.1(a) describes in specifically what this mission entails in the context of names. While ICANN's role is narrow, it is not limited to technical stability. Specifically, the Bylaws provide that ICANN's purpose is to coordinate the bottom-up, multi-stakeholder development and implementation of policies "for which uniform or coordinated resolution is reasonably necessary to facilitate the openness, interoperability, resilience, security and/or stability of the DNS including, with respect to TLD registrars and registries" (Bylaws, Section 1.1(a)(ii)), which is further defined in Annex G-1 and G-2 of the Bylaws to include, among other things: 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); maintenance of and access to accurate and up-to-date information concerning registered names and name servers; procedures to avoid disruptions of domain name registrations due to suspension or termination of operations by a registry operator or a registrar (e.g., escrow); and- the transfer of registration data upon a change in registrar sponsors or one or more registered names. 4.2. The Bylaws articulate that issues surrounding the provision of Registration Data Directory Services (RDDS) by Registry Operators and Registrars are firmly within ICANN's mission. The Bylaws provide further insight into the legitimate interests designed to be served by RDDS. For example, the Bylaws specifically obligate ICANN, in carrying out its mandate, to "adequately address issues of competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns, and rights protection" (Bylaws Section 4.6 (d)). While ICANN has	Yes	Yes	No	No	No	Yes	Yes	No	Yes
Section 4 - Lawfulness and Purpose of Processing (TLD Registration Data)	4.3. Accordingly, ICANN's mission directly involves facilitation of third party Processing for legitimate and proportionate purposes related to law enforcement, competition, consumer protection, trust, security, stability, resiliency, malicious abuse, sovereignty, and rights protection. ICANN is required by Section 4.6(d) of the Bylaws, subject to applicable laws, to "use commercially reasonable efforts to enforce its policies relating to registration directory services," including by working with stakeholders to "explore structural changes to improve accuracy and access to generic top level domain registration data," as well as considering safeguards for protecting such data." As a result, ICANN is of the view that the collection of Personal Data (one of the elements of Processing) is specifically mandated by the Bylaws. In addition, other elements of the Processing Personal Data in Registration Data by Registry Operator and Registrar, as required and permitted under the Registry Operator's Registry Agreement with ICANN and the Registrar's Registrar Accreditation Agreement with ICANN, is needed to ensure a coordinated, stable and secure operation of the Internet's unique identifier system.	Yes	Yes	No	No	No	Yes	Yes	No	Yes
Section 4 - Lawfulness and Purpose of Processing (TLD Registration Data)	There is a difference of opinion as to whether ICANN's Bylaws and its role described in the Temporary Specification extend beyond ICANN's remit. These introductory sections should be re-examined after the analysis of the sections 4.4 et seq is completed. There is a divergent view regarding the effect of the Bylaws on ICANN's power to require the collection, use and disclosure of personal data. Some point out, as in the case with the previous section, that it is more important to determine in which purposes the uses & disclosure of data are legitimate and not over-riden by fundamental rights as laid out in the GDPR. Then this section can be re-written if necessary (or eliminated).	Yes	Yes	No	No	No	Yes	Yes	No	Yes
Section 4 - Lawfulness and Purpose of Processing (TLD Registration Data)	While ICANN has a responsibility as the administrator and coordinator of the DNS to facilitate the collection, use and disclosure of personal data, some point out, as in the case with the previous section, that it is more important to determine in which purposes the uses & disclosure of data are legitimate and not over-riden by fundamental rights as laid out in the GDPR. Then this section can be re-written if necessary (or eliminated).	Yes	Yes	No	No	No	Yes	Yes	No	Yes

	Issue Summarization	Alex Deacon and Diane Plaut	Ashley Heineman	Amr Elsad	Matt Serlin	Thomas Rickert	Mark Svancarek	Hadia Elmihawi	Kristina Rosette	Greg Aaron, for Ben Butler and Rod Rasmussen
Section 4 - Lawfulness and Purposes of Processing gTLD Registration Data	4.4.7. Enabling the publication of technical and administrative points of contact administering the domain names at the request of the Registered Name Holder.									
	Options not in favor of this section question the utility of this voluntary data submission and whether voluntary data submissions should be included in the temporary specification.	Yes	Yes	Yes	No	No	Yes	Yes	No	Yes
		IPC is supportive of this comment however we believe that publication of this data happens at the request "or consent" of the Registered Name Holder. This is consistent with the requirements placed on the Registrar in Section 7.2.4.		In principle the NCSG does not object to a Registered Name Holder opting for their contact information to be disclosed to a wide audience, however this must only happen in line with Recital 43 ("Freely Given Consent") of the GDPR, which states that consent, in order to be lawful, must be freely given and a genuine choice made by the registrant.	The working calls to mind admin and technical contacts, which are no longer useful in fulfilling the purpose of making contact with the relevant people on administrative or technical issues - that would be the registrar of record, rather than admin and tech contacts. The Registered Name Holder has a means of publishing their own information, via their website. In addition, technical and administrative contacts that are not the registrar cannot be published by the registrar without appropriate consent, which is impossible to get.	It is questionable whether it should be a purpose of data processing to be able to publish this data, particularly since the Temporary Specification does not require the publication of this data. Also, not all contracted parties may see the need of collecting such data in the first place. Additionally, the purposes for collecting such data, if at all, must be determined before discussing the question of publication.	BC agrees with this section and suggests the following topics for future discussion: Final policy should allow for both request or consent of Registered Name Holder"		The RvSG notes that given the advice received from Article 29 / EDPB, the eEPDP working group should reconsider the language in Section 4. Given that that the "Mission and Scope" of the eEPDP charter includes Part 1: Purposes for Processing Registration Data, the RvSG feels that it is important for the working group to specifically deliberate on each of the purposes set out in Section 4.4 of the Temporary Specification.	
Section 4 - Lawfulness and Purposes of Processing gTLD Registration Data	4.4.8. Supporting a framework to address issues involving domain name registrations, including but not limited to: consumer protection, investigation of cybercrime, DNS abuse, and intellectual property protection;	Yes	No	No strong opinion	No	No	Yes	Yes	No	Yes
	Explanation opposed to this section are not sufficiently detailed to adequately describe the issue. For example, what is the distinction among DNS Abuse, cybercrime and intellectual property theft?	The IPC supports this section however we suggest that in the eEPDP report the term "Supporting" be replaced with "Providing" to make it consistent with Section 4.4.9. Note also the comment made to Question 8. In addition, it may be appropriate to address 4.4.8. and 4.4.9. together because of the overlap of cybercrime and law enforcement.	GAC Representatives to the eEPDP would like to flag this item as not supported but will need more time to propose appropriate language. It is not clear if it is formulated as defining a purpose in a way that is consistent with the GDPR.	The NCSG believes section 4.4.8 will be better addressed during the eEPDP Team's review of the annex to the temporary specification. For now we propose that section 4.4.8 be replaced with: "Enabling verified and authorized third parties (if any) to request relevant data from registrars and registries in a secure manner to address issues involving domain name registrations"	The following should be struck: "consumer protection" and "intellectual property protection" as they're outside of ICANN's scope / mandate and are very much down to issues around content. ICANN's remit is for "DNS abuse" only. "Cybercrime" may be included to the extent that it is also DNS abuse. In addition, ICANN contracts for registrars and registries require them to publish specific abuse contact information.	Absent details on what this framework looks like, it is not possible to endorse this purpose. It is questionable whether registration data is required to be passed on to third parties to achieve all purposes that might be included in the framework.	BC agrees with this section and suggests the following topics for future discussion: In the final policy, "supporting" should be replaced with "Providing" to have parity with other like purposes (e.g., 4.4.9).		The RvSG notes that given the advice received from Article 29 / EDPB, the eEPDP working group should reconsider the language in Section 4. Given that that the "Mission and Scope" of the eEPDP charter includes Part 1: Purposes for Processing Registration Data, the RvSG feels that it is important for the working group to specifically deliberate on each of the purposes set out in Section 4.4 of the Temporary Specification.	
Section 4 - Lawfulness and Purposes of Processing gTLD Registration Data	4.4.9. Providing a framework to address appropriate law enforcement needs;	Yes	No	Yes	No strong opinion	No	Yes	Yes	No	Yes
	There is a suggestion that LEA access to personal data needn't pass the balancing that data can be disclosed when legitimate and not over-riden by fundamental rights. The preamble should refer to Art.6 of the GDPR. Must LEAs demonstrate the right to access data?	But please see responses to Question 8 and 15.	GAC Representatives to the eEPDP would like to flag this item as not supported but will need more time to propose appropriate language. It is not clear if it is formulated in a way that defines a purpose in a way that is consistent with the GDPR. The use of the term "law enforcement" may also need to be modified.		We do note the jurisdiction of specific law enforcement should be addressed.	LEA needs and legal grounds for providing access need to be discussed first. Where there is a legal requirement to pass on data to LEAs, that would not even need to be included in the list of purposes. It is important to discuss whether it is legally possible / desirable to make available data to LEAs that do not have a right to request data.			The RvSG notes that given the advice received from Article 29 / EDPB, the eEPDP working group should reconsider the language in Section 4. Given that that the "Mission and Scope" of the eEPDP charter includes Part 1: Purposes for Processing Registration Data, the RvSG feels that it is important for the working group to specifically deliberate on each of the purposes set out in Section 4.4 of the Temporary Specification.	
Section 4 - Lawfulness and Purposes of Processing gTLD Registration Data	4.4.10. Facilitating the provision of zone files of gTLDs to Internet users;	Yes	Yes	Yes	No	No	Yes	Yes	No	Yes
	Given the distinction between zone file data and registration data, whether zone file contains personal data, and the fact that zone file data is currently available - can this section remain?				The provision of zone files has nothing to do with WHOIS and this provision should be deleted. Zone files should be technical data only, not personal data. We question the extent to which general 'Internet users' need access to zone files, and in any event, the types of Internet users who have legitimate reasons for accessing zone files should be identified (e.g. researchers, law enforcement, rights enforcement, others?)	This requires further discussion. The way zone file data is made available today is problematic, to say the least.			The RvSG notes that given the advice received from Article 29 / EDPB, the eEPDP working group should reconsider the language in Section 4. Given that that the "Mission and Scope" of the eEPDP charter includes Part 1: Purposes for Processing Registration Data, the RvSG feels that it is important for the working group to specifically deliberate on each of the purposes set out in Section 4.4 of the Temporary Specification.	
Section 4 - Lawfulness and Purposes of Processing gTLD Registration Data	4.4.11. Providing 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;	Yes	Yes	Yes	No	Yes	Yes	Yes	No	Yes
	Is it accurate to say there is general approval of this data use so long as ICANN does not have access to the registration data (which is thought to be the case)?				RvSG does not understand how WHOIS would be viewed as "safeguarding Registered Name Holders' Registration Data in the event of business or technical failure, or other unavailability of a Registrar or Registry Operator." - clarification is needed. Data escrow should be used as a backup and not as a means for ICANN to gain access to personal data. Unavailability is a vague term and appears to be redundant to previously mentioned "business or technical failure."				The RvSG notes that given the advice received from Article 29 / EDPB, the eEPDP working group should reconsider the language in Section 4. Given that that the "Mission and Scope" of the eEPDP charter includes Part 1: Purposes for Processing Registration Data, the RvSG feels that it is important for the working group to specifically deliberate on each of the purposes set out in Section 4.4 of the Temporary Specification.	
Section 4 - Lawfulness and Purposes of Processing gTLD Registration Data	4.4.12. Coordinating dispute resolution services for certain disputes concerning domain names;	Yes	Yes	Yes	No strong opinion	Yes	Yes	Yes	No	Yes
	Except for the standard registry response, there appears to be consensus support for this section. Recommendations for enhancement can occur in the next step.	The IPC supports this section but believes that more specificity is required in the eEPDP report. Specifically the eEPDP final report should specify not only coordination but also facilitation of dispute resolution services including providing a forum and creating the necessary procedures.					BC agrees with this section and suggests the following topics for future discussion: Not all impacted parties will play a coordinating role in every instance; in some cases, facilitation will be required rather than coordination. Accordingly, the BC suggests replacing "coordinating" with "facilitating".		The RvSG notes that given the advice received from Article 29 / EDPB, the eEPDP working group should reconsider the language in Section 4. Given that that the "Mission and Scope" of the eEPDP charter includes Part 1: Purposes for Processing Registration Data, the RvSG feels that it is important for the working group to specifically deliberate on each of the purposes set out in Section 4.4 of the Temporary Specification.	
Section 4 - Lawfulness and Purposes of Processing gTLD Registration Data	4.4.13. Handling contractual compliance monitoring requests, audits, and complaints submitted by Registry Operators, Registrars, Registered Name Holders, and other internet users.	No	Yes	Yes	No	No	Yes	Yes	No	Yes
	Where there is disagreement with this section, the disagreement focus on identifying specific data needs, without which the compliance task would be impossible to accomplish.	Under Article 6(1)(b) of the GDPR, processing is lawful when necessary for the performance of a contract to which the data subject is party and it is not subject to the balancing of interests test under Article 6(1)(f).			Contractual compliance audits do not rely on public WHOIS data and can manage audits without access to personal data. WHOIS does not exist for ICANN Compliance to register not has ICANN Compliance any legitimate purpose in accessing personal data. There are also possible safeguarding issues around transfer of the data to ICANN Compliance, since they have no footprint in the EU.	This is too broad brush. The document should be precise on why the data is needed for the various groups. There also seems to be overlap with other purposes, so some aspects might be redundant.			The RvSG notes that given the advice received from Article 29 / EDPB, the eEPDP working group should reconsider the language in Section 4. Given that that the "Mission and Scope" of the eEPDP charter includes Part 1: Purposes for Processing Registration Data, the RvSG feels that it is important for the working group to specifically deliberate on each of the purposes set out in Section 4.4 of the Temporary Specification.	

	Issue Summarization	Alex Deacon and Diane Plaut	Ashley Heineman	Amr Elsiadr	Matt Serlin	Thomas Rickert	Mark Svancanek	Hadia Elmihawi	Kristina Rosette	Greg Aaron, for Ben Butler and Rod Rasmussen
Appendix A: Registration Data Directory Services	3. Additional Provisions Concerning Processing Personal Data in Public RDOS Where Processing is not Subject to the GDPR/Registry Operator and Registrar MAY apply the requirements in Section 2 of this Appendix (I) where it has a commercially reasonable purpose to do so, or (II) where it is not technically feasible to limit application of the requirements as provided in Section 2.1 of this Appendix.	While many groups state that GDPR data restrictions should not be applied to registrars / operators outside the EEA, registrars should explain operational challenges as a prelude to discussion of this issue.	The IPC does not support this section for the reasons listed in our answer to Question 23. This provision should be stricken. What commercially reasonable purpose would justify this? It does not seem technically infeasible to limit the application of the Section 2 requirements in cases where GDPR or other similar privacy/data protection law does not apply. R/Ry should be required to publish full RDOS data where such law does not apply.	GAC Representatives to the EPDP would like to flag that consideration of this section is still ongoing.	Given the multiple data controllers and processors involved in the domain registration process, and there is no reliable way for contracted parties to determine whether processing is subject to GDPR, a conservative approach (ie applying GDPR protections to all registrant data) is the least risky.	Yes	No	Yes	Yes	No
Appendix A: Registration Data Directory Services	4. Access to Non-Public Registration Data 4.1. Registrar and Registry Operator MUST provide reasonable access to Personal Data in Registration Data to third parties on the basis of a legitimate interests pursued by the third party, except where such access should be defined (or the quoted term be eliminated); 2) there is concern that individual decisions or rulings will be construed as rules of law and be implemented haphazardly by registrars -- instead case law should be interpreted and used to make a single rule-set for all registrars; 3) this section applies to the "access" issue, and should be addressed when the group discusses access (per the Charter, after gating questions have been answered.)	While parties generally support this section: 1) "reasonable" access should be defined (or the quoted term be eliminated); 2) there is concern that individual decisions or rulings will be construed as rules of law and be implemented haphazardly by registrars -- instead case law should be interpreted and used to make a single rule-set for all registrars; 3) this section applies to the "access" issue, and should be addressed when the group discusses access (per the Charter, after gating questions have been answered.)	The IPC supports this section and strongly believes that the EPDP is responsible for developing policy that defines the term "reasonable access" which will enable access to non-private whois data as permitted by the GDPR. This includes the concept of "tiered access" and its implementation via the RDAP protocol. Regarding providing reasonable access the IPC believes that 90 days is too long suggests that access should be required as soon as commercially feasible but in no event longer than 11 calendar days, which is consistent with the time period in which registrars must comply with the requirements of the current WHOIS Accuracy Specification under the 2012 RAA, unless the time period for publication or disclosure is otherwise specified by the applicable legislation, court order, or other binding legal authority. The IPC also believes that Section 4.2, is too limited and doesn't take into account law enforcement and other processing even under GDPR that is NOT subject to the balancing test. At the very minimum, there should be added here a new Section 4.2 that reads as follows and ending Section 4.2 should become 4.3. "Registrar and Registry Operator MUST provide immediate access to Personal Data in Registration Data to competent authorities that seek access to Personal Data for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security. Such access shall be granted without any financial charge and the Processing of such Personal Data by such competent authorities is not subject to any restrictions or	Section 4 and related subsections. The GAC would like "reasonable access" defined. The GAC would also like these sections to be clarified to make clear that Registrar and Registry Operator responses to access requests are time bound and that any refusal to provide access be accompanied with a rationale for why.	A court of competent jurisdiction has decided that access to personal data was appropriate in a single case, it may not be extrapolated that either, (a) access to that personal data is appropriate in all cases, (b) access by that party to other personal data is appropriate in all cases, or (c) access by similar parties to similar data is appropriate in any case. So while 4.2 is fine as written, there are significant opportunities for ICANN or other interests to stretch the meaning of it until personal data protection is a mere collection of words with no meaning whatsoever. For example there are huge issues with the concept of giving access to a "class of third party"	This section needs to be rewritten. Not all disclosure of data will take place on the basis of Art. 6(1) GDPR. Also, there is an issue with making disclosure of data mandatory with such a broad brush statement. This section is best amended when the access discussion has been held.	IC agrees with this section and suggests the following topics for future discussion: • While we anticipate that "reasonable access" will require RDAP and differentiated ("tiered") access, it is the task and responsibility of this policy development panel to work out the definition for reasonableness: panel must delineate processes, timelines, and detailed expected response from Registries and Registrar to reasonable access requests based on legitimate interests as allowed under the GDPR. • As mentioned elsewhere, it may be too soon to determine whether service level assurances ("SLA") such as "within 90 days" are appropriately quick or technically achievable. At this moment, 90 days seems excessively long for most cases. • Regardless of the SLA for access that is ultimately decided, if a Registrar or Registry is presented with an ambiguous situation (where ICANN has not yet published guidance), we believe that there must be an obligation on the Registrar or Registry operator to take immediate action to seek guidance upon receiving a request.	Changes to the access requirements outlined in Section 4 of appendix A should be considered during discussions of a standardized access model, which will take place later in the ePPD, following the discussion of the other elements of the Temporary Specification and completion of the Gating Questions in the ePPD Charter.	No, because registrars and registry operators must be required to participate in a uniform, coordinated access program that allows predictable tiered access and credentialing. The current language in 26 allows all manner of non-uniform implementations, with no predictability and potentially large operational barriers.	
Appendix A: Registration Data Directory Services	5. Publication of Additional Data Fields/Registrar and Registry Operator MAY output additional data fields, subject to the Data Processing requirements in Appendix C.	There is strong support for this section, with the caveat that there should be some measure of standardization of the output; and that the inclusion of Annex C in this clause is problematic and reserves the right to revisit this language when Annex C is reviewed.	Yes	Yes	No strong opinion	Yes	Yes	No strong opinion	No	Yes
					But there should be some level of consistency / rules - we don't want raw HTML.	Consent must be evidenced at all levels, so a consent-based publication of data requires the existence of the technical means to process consent in a compliant fashion.			The RvSG has significant concerns with the Data Processing Requirements as outlined in Appendix C of the Temporary Specification. While the RvSG accepts the first part of this section, "Registrar and Registry Operator MAY output additional data fields," this acceptance does not mean that the RvSG agrees to all the terms of Appendix C, and reserves the right to suggest edits to or removal of certain text in Appendix C. The Data Processing Requirements contained in this section may be impacted by ePPD discussion of "registration data" and purposes.	