| **ICANN Purpose:** 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  (Purposes by Actor (E))(TempSpec - 4.4.11) | |
| --- | --- |
| **Lawfulness of Processing**:  Art. 6.1(b): processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract. | |
| |  |  | | --- | --- | | **Data Elements Collected or Generated - Pre GDPR** | **Fields to be Collected** | | **Lawfulness of Processing Questions** |
| |  |  | | --- | --- | | **Source:** Registrar Data Escrow Specifications | | | Domain Name | 1 | | Registry Domain ID | - | | Registrar Whois Server | - | | Registrar URL | - | | Updated Date | - | | Creation Date | - | | Registry Expiry Date | - | | Registrar Registration Expiration Date | 1 | | Registrar | 1 | | Registrar IANA ID | - | | Registrar Abuse Contact Email | - | | Registrar Abuse Contact Phone | - | | Reseller | 1 | | Domain Status | - | | Registry Registrant ID | - | | Registrant Fields |  | |        Name | 1 | |        Organization (opt.) | - | |        Street | 1 | |        City | 1 | |        State/province | 1 | |        Postal code | 1 | |        Country | 1 | |        Phone | 1 | |        Phone ext (opt.) | - | |        Fax (opt.) | - | |        Fax ext (opt.) | - | |        Email | 1 | | 2nd E-Mail address | - | | Admin ID | - | | Admin Fields |  | |        Name | - | |        Organization (opt.) | - | |        Street | - | |        City | - | |        State/province | - | |        Postal code | - | |        Country | - | |        Phone | - | |        Phone ext (opt.) | - | |        Fax | - | |        Fax ext (opt.) | - | |        Email | - | | Tech ID | - | | Tech Fields |  | |        Name | - | |        Organization (opt.) | - | |        Street | - | |        City | - | |        State/province | - | |        Postal code | - | |        Country | - | |        Phone | - | |        Phone ext (opt.) | - | |        Fax | - | |        Fax ext (opt.) | - | |        Email | - | | NameServer(s) | - | | DNSSEC | - | | Name Server IP Address | - | | Last Update of Whois Database | - | | Other Data: |  | |        Field 1 | - | |        Field 2 | - | |        Field 3 | - | |        Field 4 | - | |        Field 5 | - | | **1) If the purpose is based on an ICANN contract, is this lawful as tested against GDPR and other laws?** |
| Yes, as escrowing the data is supported by ICANN’s mandate to provide for security and stability in the DNS and this purpose is primarily protecting the registrant’s rights. |
| **2) Is the purpose in violation with ICANN's bylaws?** |
| No.  1.1(a)(i) Coordinates the allocation and assignment of names in the root zone of the Domain Name System ("DNS") and coordinates the development and implementation of policies concerning the registration of second-level domain names in generic top-level domains ("gTLDs"). In this role, ICANN's scope is to coordinate the 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 gTLD registrars and registries, policies in the areas described in Annex G-1 and Annex G-2; and * That are developed through a bottom-up consensus-based multistakeholder process and designed to ensure the stable and secure operation of the Internet's unique names systems.   The issues, policies, procedures, and principles addressed in Annex G-1 and Annex G-2 with respect to gTLD registrars and registries shall be deemed to be within ICANN's Mission.  Section 4.6. SPECIFIC REVIEWS  (e) Registration Directory Service Review  (ii) The Board shall cause a periodic review to assess the effectiveness of the then current gTLD registry directory service and whether its implementation meets the legitimate needs of law enforcement, promoting consumer trust and safeguarding registrant data ("Directory Service Review"). |
| **3) Data Required for purpose of whom?** |
| ICANN, Registrars, Escrow Agent |
| **4) Is the processing necessary to achieve the purpose?** |
| Yes, Escrow exists because Registrants have a reasonable expectation of business continuity.  While all contracted parties that have to be compliant with GDPR need to make sure there are protections against data loss and mechanisms to enable swift data recovery, ICANN is operating at the global level where customers can register domain names with registrars globally and the registry operators are based in numerous jurisdictions, it is important to have interoperability of escrow agents. Requiring all contracted parties to use the same policies for both escrowing data and applying the same standards to escrow agents for making data available, is necessary for contingency planning at the global level. |
| **5) Do Data Elements require transfer to meet the purpose? (Charter Questions 2c, 2d, 2e, 2i)** |
| Yes. In answering charter question 2d(1) a change is likely required in defining which fields should be deposited for escrow. A Data Processing Agreement should be established that outlines the requirements for transferring data. |
| **6) Publication of data by Registrar/Registry required to meet the purpose? (Charter Question 2f)** |
| No.  Data is not made public for escrow purposes, but a transfer to the escrow agent and - in case of contingencies - the transfer to a gaining registrar is required to ensure that operations are not impaired. See. Question 9 for more information. |
| **7) Are there any “picket fence” considerations related to this purpose?** |
| None. |
| **8) What are the data retention requirements to meet the purpose? (Charter Question 2g)** |
| From the Escrow Specification (3.3.1.6), deposits to Third-Party Escrow Agents two copies are held for one year.  Questions about the validity of the one year for TPP, noting that no retention is listed for ICANN approved vendors, given that once a new deposit occurs and is verified, it renders prior deposits useless. |
| **9) Additional information needed to adequately document the purpose?** |
| How and who ICANN choses as the Gaining Registrar may have additional implications to the lawfulness should the Gaining Registrar not reside within the EU when the Losing Registrar did reside within the EU. |

Chain of Custody:

* Registrar Data Escrow Program: <https://www.icann.org/resources/pages/registrar-data-escrow-2015-12-01-en>
  + Data Fields Source: <https://www.icann.org/en/system/files/files/rde-specs-09nov07-en.pdf>
* Temp Spec: Section 5.3, Appendix B