

ICANN Purpose: Facilitate lawful access for legitimate 3rd party interests to data identified herein that is already collected

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.

Art. 6.1(f): processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.

Art. 6.1(a): Consent - the data subject has given consent to the processing of his or her personal data for one or more specific purposes.

Data Elements Collected or Generated - Pre GDPR	Fields to be Collected	Lawfulness of Processing Questions
Source: Registrar Data Escrow Specifications		1) If the purpose is based on an ICANN contract, is this lawful as tested against GDPR and other laws?
Domain Name	-	<p>This purpose is not based on the ICANN contract, but rather on the requirements of the Temp Spec. This Purpose, although an interpretation of the Mission Statement of ICANN, only found formal application and contractual necessity for the CPH under Section 4.3 of the Temporary Specification ('Lawfulness and purposes of gTLD Registration Data') as operationalized in Appendix A, Section 4 .</p> <p>ICANN Purpose:- Asserted under section 4.3 of the Temp Spec with reference to Section 4.6(e) of the ICANN Bylaws, but there is no guarantee that an assertion contained in a private company's document to uphold third party interests can satisfy the requirements of legislation adopted by the European Union or other legislative bodies. The advice of the European Data Protection Board in its letter of 5 July 2018 to ICANN urges ICANN not to conflate its own purposes with the interests of third parties, and that such interests are not overridden by the interests or fundamental rights and freedoms of the data subject.</p> <p>CPH Purpose- NO (although currently the Temp spec imputes this is a purpose of the CPH)</p> <p>Rationale: ICANN has claimed a Public Policy Role, this role is not formalized in any EU legislation, EU member state legislation, or any other legislation that we are aware of. Therefore is 'Public Policy' is aspirationally asserted, not proven.</p> <p>Whereas there is no issue with ICANN purporting to fulfil this role in pursuing its objectives, when applying strict legal criteria, more formality is required. Given the role ICANN plays, it may choose to test its public interest role and try to obtain a favourable decision by a court of competent</p>
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 (opt.)	-	
· Street	-	
· City	-	
· State/province	-	
· Postal code	-	
· Country	-	
· Phone	-	
· Phone ext (opt.)	-	
· Fax (opt.)	-	
· Fax ext (opt.)	-	
· Email	-	
2nd E-Mail address	-	
Admin ID	-	
Admin Fields		

· Name	-
· Organization (opt.)	-
· Street	-
· City	-
· State/province	-
· Postal code	-
· Country	-
· Phone	-
· Phone ext (opt.)	-
· Fax (opt.)	-
· Fax ext (opt.)	-
· Email	-
Tech ID	-
Tech Fields	
· Name	-
· Organization (opt.)	-
· Street	-
· City	-
· State/province	-
· Postal code	-
· Country	-
· Phone	-
· Phone ext (opt.)	-
· Fax (opt.)	-
· 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	-

jurisdiction. However, applying an untested assertion as a basis for a legal standard carries significant risks particularly for the CPH (as well as ICANN Org).

The Temp Spec purported to bind the CPs to a public policy purpose with regards to disclosure. Functionally, given the Joint controller designation in App C, the Temp Spec purports to assign this this purpose that the CPH. As the validity of basic public policy purpose remains untested, it is hard to consider this lawful. Most of the CPH would not consider their ‘purpose’ to be based on public policy, but on functional business considerations, or fulfilling the requirements of their contract with ICANN as processors (specifically with regard to publication of data). If the parties are unwilling or unable to legally accept this, it is hard to consider this purpose to be lawful.

NOTE: This does not mean, however that the CPH may not disclose such data, where a 3rd party legitimate interest exists (under 6(1)f). ***This however is an exception to purpose limitation, rather than a purpose in its own right and should not be confused in this manner.***

2) Is the purpose in violation with ICANN's bylaws?

Perhaps

Although it is not argued that ICANN’s Bylaws prevent it from asserting a Public Policy type purpose, the implied ‘public policy’ purpose by ICANN Org seems incongruent with the ICANN Bylaws, Article 1 (b) (vi) which clearly notes that ICANN, “While remaining rooted in the private sector (including business stakeholders, civil society, the technical community, academia, and end users), ***recognizing that governments and public authorities are responsible for public policy*** and duly taking into account the public policy advice of governments and public authorities;” . ***[emphasis added]*** .

3a) Description of processing activity

3b) Responsible Party/Parties

This purpose suggests the following

- 1) Collection of registrant data for the purpose of disclosures under Art 6(1)(f) (Registrar / Registry)
- 2) Storage of registrant data for disclosure under Art 6(1)(f) (Registrar /Registry)

3) Disclosure of data in contemplation of Art 6(1)(f)
(Registrar / Registry)

4) Is the processing necessary to achieve the purpose?

No - the processing as noted in 3A and 3B, are not necessary for any collection, storage or disclosure under Art 6(1)(f). Again disclosures under Art 6(1)f are permitted under the law, and do not require a separate 'purpose' to allow for same. This 'purpose' would be a misinterpretation of the GDPR's purpose requirements.

5) Do Data Elements require transfer to meet the purpose? (Charter Questions 2c, 2d, 2e, 2i)

Yes - Rr to Ry

6) Publication of data by Registrar/Registry required to meet the purpose? (Charter Question 2f)

Yes and no. Disclosure of the data is a publication. However, in respect of art 6(1)(f), it is more straightforward to achieve the required balance with data subjects fundamental rights if that disclosure is on a 1:1 basis following a specific, justified query. Wider publication is problematic with regard to 6(1)(f) and likely to be viewed as indiscriminate - this is not necessary to fulfil the purpose.

7) Are there any "picket fence" considerations related to this purpose?

Currently Yes. This new requirement for disclosure for the public policy purpose, must be formalized in a JCA / DPA. Although the ePDP may outline the policy grounding the expectations (whether lawful or not) the contract between ICANN ORG and the CPH is outside the Picket Fence and is not proper for the ePDP to dictate.

8) What are the data retention requirements to meet the purpose? (Charter Question 2g)

Life of the Registration + 35 days to allow for the completion of the lifecycle (RGP + Pending Delete).

9) Additional information needed to adequately document the purpose?

<Insert Response Here>

Chain of Custody:

- TBD
- Temp Spec: N/A