| **ICANN Purpose:** Facilitate lawful access for legitimate 3rd party interests, including those related to consumer protection, cybercrime, law enforcement, DNS Abuse or potential or alleged intellectual property violations, to RDS data that is already collected and identified herein.  Policy recommendation: requirements related to the accuracy of registration data under the current ICANN contracts and consensus policies shall not be affected by this policy.  Note: For avoidance of doubt, this purpose does not describe or imply any implementation details of a so-called “Unified Access Model”. It only describes ICANN’s role, as described in its bylaws, in facilitating lawful access to and disclosure of RDS data to 3rd parties with legitimate interests. The lawful basis associated with this purpose is limited to ICANN and contracted parties as the issue of access/third parties will be discussed at a later date.  (Purposes by Actor (B))(TempSpec - 4.4.8, Appx A.4, Appx C) | |
| --- | --- |
| **Lawfulness of Processing**:  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. | |
| |  |  | | --- | --- | | **Data Elements Previously Collected or Generated** | **Fields to be Accessed** | | **Lawfulness of Processing Questions** |
| |  |  | | --- | --- | | **Source:** | | | Domain Name | 1 | | Registry Domain ID | 1 | | Registrar Whois Server | 1 | | Registrar URL | 1 | | Updated Date | 1 | | Creation Date | 1 | | Registry Expiry Date | 1 | | Registrar Registration Expiration Date | 1 | | Registrar | 1 | | Registrar IANA ID | 1 | | Registrar Abuse Contact Email | 1 | | Registrar Abuse Contact Phone | 1 | | Reseller | 1 | | Domain Status | 1 | | Registry Registrant ID | 1 | | Registrant Fields |  | |        Name | 1 | |        Organization (opt.) | (1) | |        Street | 1 | |        City | 1 | |        State/province | 1 | |        Postal code | 1 | |        Country | 1 | |        Phone | 1 | |        Phone ext (opt.) | (1) | |        Fax (opt.) | (1) | |        Fax ext (opt.) | (1) | |        Email | 1 | | 2nd E-Mail address | - | | Admin ID | - | | Admin Fields |  | |        Name | 1 | |        Organization (opt.) | (1) | |        Street | 1 | |        City | 1 | |        State/province | 1 | |        Postal code | 1 | |        Country | 1 | |        Phone | 1 | |        Phone ext (opt.) | (1) | |        Fax (opt.) | (1) | |        Fax ext (opt.) | (1) | |        Email | 1 | | Tech ID | - | | Tech Fields |  | |        Name | 1 | |        Organization (opt.) | (1) | |        Street | 1 | |        City | 1 | |        State/province | 1 | |        Postal code | 1 | |        Country | 1 | |        Phone | 1 | |        Phone ext (opt.) | (1) | |        Fax (opt.) | (1) | |        Fax ext (opt.) | (1) | |        Email | 1 | | NameServer(s) | 1 | | DNSSEC | 1 | | Name Server IP Address | 1 | | Last Update of Whois Database | 1 | | 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  The processing activity of collection, Disclosure and/or transmission of non-public already collected registrant data to enable access by third parties is lawful under 6(1)(f): processing is necessary for the purposes of the legitimate interests pursued by the controller, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data  [Note: See also Section 9 on distinguishing the legal basis for ICANN vs. potential legal bases for 3rd parties.] |
| **2) Is the purpose in violation with ICANN's bylaws?** |
| No.  Ref Bylaws sections -   * Section 1.1(a)(i)   (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 gTLDregistrars 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 1.1(d)(ii)   + (ii) Notwithstanding any provision of the Bylaws to the contrary, the terms and conditions of the documents listed in subsections (A) through (C) below, and ICANN's performance of its obligations or duties thereunder, may not be challenged by any party in any proceeding against, or process involving, ICANN (including a request for reconsideration or an independent review process pursuant to Article 4) on the basis that such terms and conditions conflict with, or are in violation of, ICANN's Mission or otherwise exceed the scope of ICANN's authority or powers pursuant to these Bylaws ("**Bylaws**") or ICANN's Articles of Incorporation ("**Articles of Incorporation**"):   + (A)   (1) all registry agreements and registrar accreditation agreements between ICANN and registry operators or registrars in force on 1 October 2016 [1], including, in each case, any terms or conditions therein that are not contained in the underlying form of registry agreement and registrar accreditation agreement;  (2) any registry agreement or registrar accreditation agreement not encompassed by (1) above to the extent its terms do not vary materially from the form of registry agreement or registrar accreditation agreement that existed on 1 October 2016;   * Section 1.2(a)   (a) **COMMITMENTS**  In performing its Mission, ICANN must operate in a manner consistent with these Bylaws for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and international conventions and applicable local law, through open and transparent processes that enable competition and open entry in Internet-related markets. Specifically, ICANN commits to do the following (each, a "**Commitment**," and collectively, the "**Commitments**"):  (i) Preserve and enhance the administration of the DNS and the operational stability, reliability, security, global interoperability, resilience, and openness of the DNS and the Internet;  (ii) Maintain the capacity and ability to coordinate the DNS at the overall level and work for the maintenance of a single, interoperable Internet;  (iii) Respect the creativity, innovation, and flow of information made possible by the Internet by limiting ICANN's activities to matters that are within ICANN's Mission and require or significantly benefit from global coordination;  (iv) Employ open, transparent and bottom-up, multistakeholder policy development processes that are led by the private sector (including business stakeholders, civil society, the technical community, academia, and end users), while duly taking into account the public policy advice of governments and public authorities. These processes shall (A) seek input from the public, for whose benefit ICANN in all events shall act, (B) promote well-informed decisions based on expert advice, and (C) ensure that those entities most affected can assist in the policy development process;  (v) Make decisions by applying documented policies consistently, neutrally, objectively, and fairly, without singling out any particular party for discriminatory treatment (i.e., making an unjustified prejudicial distinction between or among different parties); and  (vi) Remain accountable to the Internet community through mechanisms defined in these Bylaws that enhance ICANN's effectiveness.   * Section 4.6(e)(i)   (e) Registration Directory Service Review  (i) Subject to applicable laws, ICANN shall use commercially reasonable efforts to enforce its policies relating to registration directory services and shall work with Supporting Organizations and Advisory Committees to explore structural changes to improve accuracy and access to generic top-level domain registration data, as well as consider safeguards for protecting such data.  (ii) The Board shall cause a periodic review to assess the effectiveness of the then current gTLDregistry directory service and whether its implementation meets the legitimate needs of law enforcement, promoting consumer trust and safeguarding registrant data ("**Directory Service Review**").   * Annex G1 and G2   + “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;” |
| **3a) Description of processing activity**  **3b) Responsible Party/Parties** |
| ***Processing Associated with existing Temp Spec “Reasonable Access” Regime***  3a) Processing activities:  Collection of registrant data, but recognize that this is limited to the data currently collected.  Disclosure of registrant data to third parties with a lawful basis, including legitimate interests.  3b) Responsible parties:  Registrars, Registrars, ICANN– Joint Controllers  ***Processing Associated with future (to be defined later) “UAM” Regime***  3a) Processing activities:  Transfer of registrant data to ICANN (if so decided) to fulfill disclosure request.  Disclosure of registrant data to third parties with a lawful basis, including legitimate interests.  3b) Responsible parties:  ICANN – Controller  Registries and Registrars – Data Processors |
| **4) Is the processing necessary to achieve the purpose?** |
| Yes. |
| **5) Do Data Elements require transfer to meet the purpose? (Charter Questions 2c, 2d, 2e, 2i)** |
| Currently No. However, transfer as defined in the charter questions listed above may be required under future to-be-defined models. |
| **6) Publication of data by Registrar/Registry required to meet the purpose? (Charter Question 2f)** |
| Yes. |
| **7) Are there any “picket fence” considerations related to this purpose?** |
| No.   * The WHOIS system, including 3rd party access, is well within the Picket Fence.   + Bylaws Section 1.1(a), Annex G1 and G2 |
| **8) What are the data retention requirements to meet the purpose? (Charter Question 2g)** |
| Expiration of the Domain Name plus twp years is sufficient for this purpose.  [ICANN should ensure/facilitate/coordinate the retention of data for this purpose from the domain's creation date, through the one-year anniversary of the domain's expiration date.] |
| **9) Additional information needed to adequately document the purpose?** |
| 6(1) describes the legal bases for ICANN’s purpose of facilitation, subsequent processing activities carried out by third parties with lawful access (or via disclosure of RDS data) would require their own most appropriate lawful basis and compliance with the accountability principle e.g., Law enforcement may utilize 6(1)(e) to process the personal data. The latter is not part of this purpose.  Later, additional information will be needed from ICANN Org. regarding the set-up and implementation of an access model. At that time, there can be a full and proper assessment made as to the full scope of legal basis involved e.g., if ICANN stands as the center of a unified access model it would have clear abilities to illustrate a legal basis both under 6(b) and through possible consent of the data subjects. |

Chain of Custody:

* RAA - <https://www.icann.org/resources/pages/approved-with-specs-2013-09-17-en>
* Temp Spec: Section 4.4.8, Appx A.4, Appx C