

## RECOMMENDATION 13

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.

***Disclaimer:** This overview has been developed to facilitate the EPDP Team's consideration of the concerns expressed and possible updates to the recommendations. However, this does not replace the EPDP Team's obligation to review all input received in full and to indicate if any concerns in this overview have inadvertently been mischaracterized.*

### Noted Concerns

Concern	Corresponding PCRT Comment #	Further Discussion Required?
Support with the caveat that the JCA will not equally allocate responsibility among the parties. Instead, it will identify which party is controller/processor for each set of processing in our rather complex ecosystem.	2 (GoDaddy)	Yes/No
Support pending further input and legal advice.	9 (MarkMonitor)	Yes/No
ICANN Org and the Contracted Parties should work together to determine not only the terms of the agreements, but which type of agreement best reflects the realities of the domain name ecosystem and the roles each party plays in the required data processing activities.	10 (RySG)	Yes/No
Support any controller/processor arrangement that will enable ICANN to assume sufficient legal responsibility such that ICANN can compel contracted parties to respond to Whois queries from accredited requestors, most likely as part of a Unified Access Model	4, 6, 11, 12 (Coalition for Online Accountability, Microsoft, BC, IPC)	Yes/No

Delete recommendation. "pending further input and legal advice, the EPDP Team recommends" -- Go get the "further input and legal advice" and then come back with your recommendation.	14 (John Poole)	Yes/No
This recommendation appears to go beyond what is necessary for the EPDP. Proposing a specific legal vehicle (i.e., Joint Controller Agreement) without adequate consideration of how this would impact ICANN and the different types of registries and registrars that are ICANN's contracted parties is concerning and has the potential to derail the work of the group	15 (INTA)	Yes/No