

RECOMMENDATION 18

The EPDP Team recommends that ICANN Org must enter into data processing agreements with dispute resolution providers in which, amongst other items, the data retention period is specifically addressed, as this will affect the ability to have publicly-available decisions.

***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 - ICANN Org may also need to enter into data processing agreements with dispute resolution providers to limit the publication of personal and sensitive information about registrants in UDRP and URS decisions.	2 (NCSG)	Yes/No
The DPAs need to be in place for legal reasons. The publication of the decisions is a potential benefit of this, but the two aren't linked.	3 (Michele Neylon)	Yes/No
Agreements should so exist with all relevant service providers (such as the Trademark Clearinghouse provider), and not only the dispute resolution providers. Within such agreements, the data retention period should be specifically addressed, as this will affect the ability to make decisions publicly available.	4, 5, 7 (BC, Microsoft, Tucows)	Yes/No
All decisions must include party names and must be publicly-available to the greatest extent possible to maintain consistency and deter bad actors.	6 (Forum)	Yes/No
Dispute resolution vendors must have data processing agreements (DPAs) in place with any party with whom they propose to share data. This MUST	7 (Tucows)	Yes/No

<p>include contracted parties. This MAY include ICANN but only in the event that ICANN accepts full responsibility as sole data controller. If ICANN does not, there is no reason for ICANN to have access to the data held by a dispute resolution provider, so no DPA is necessary.</p>		
<p>There should be no policy change for publicly-available decisions. There is an important public interest in having publicly-available decisions, as per the "Open Court Principle", see: https://en.wikipedia.org/wiki/Open_court_principle or "open justice" in the USA. https://en.wikipedia.org/wiki/Open_justice</p> <p>Often there are questionable decisions, and openness is an important accountability mechanism. Freedom of expression and freedom of the press would be hampered by a change that makes decisions private. The UDRP or URS should be eliminated entirely, if they are to only have private decisions, and instead parties should use the courts. Or, make the UDRP/URS be "opt-in" and non-mandatory for the registrant, as an alternative.</p>	8 (George Kirikos)	Yes/No