

RECOMMENDATION 14

The EPDP Team recommends that the policy includes the following data processing activities as well as responsible parties: <please see Initial Report>.

***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 responsibilities of the respective parties for all processing activities must be further defined, detailed and captured in the appropriate data processing agreements (i.e., a JCA).	2 (GoDaddy)	Yes/No
The policy should also note that the activities and parties outlined are as the EPDP team understands the facts and law to be now, and may be subject to change based on forthcoming legal advice, EDPB guidance, and future industry and policy development.	3 (Internet Governance Project)	Yes/No
Specifics in the tables beginning on p. 63 would benefit from further clarification. Disclosure generally occurs upon the filing of a “Doe” or P/P complaint, where the registrar provides the underlying contact details to the dispute resolution provider (DRP) and the DRP then discloses them to the complainant who then would typically file an amended complaint with the updated registrant information. Thus, we would suggest listing Registrar and DRP as responsible parties for disclosure for this purpose, with 6(1)(f) as the lawful basis. Similarly, for “data retention” in the same table, we would suggest the DRP as the “responsible party” in the sense that even where the underlying registration data may no longer be	4, 5, 6, 8 (MarkMonitor, BC, IPC, Microsoft)	Yes/No

<p>retained at the ICANN/registry/registrar levels, dispute resolution determinations and underlying materials containing the initially disclosed registration data would likely be considered retention of the data. Again, the lawful basis for data retention would be 6(1)(f). In the context of this purpose, both registrar and DRP should be considered as “processors” with ICANN being a controller given that the dispute resolution mechanisms are implemented pursuant to ICANN policies.</p>		
<p>Disagree with the inclusion of Purpose #2 and Purpose #7 as they are currently worded in the initial report, and therefore, cannot support any of the processing activities and responsible parties associated with them at this time.</p>	7 (NCSG)	Yes/No
<p>The DNS requires that IP addresses must also be disclosed in applicable cases. The remaining thin gTLD registries should be required to move to thick status, per the Thick WHOIS Consensus Policy and Board Resolution 2014.02.07.08.</p>	9 (iThreat Cyber Group)	Yes/No
<p>The Initial Report indicates which actors are “Responsible Parties” for the data processing activities that correspond to each Purpose. However, the term “responsible party” is not a defined term under the GDPR and does nothing to indicate which party is the controller or processor, or whether the parties may be joint controllers, for each processing activity.</p> <p>The EPDP Team did not specifically discuss and analyze the roles and responsibilities of each party for any of the processing activities required for any of the Purposes. It must do so, and revise the recommendation as appropriate.</p>	10 (RySG)	Yes/No
<p>A lot of this needs to be in the form of a JCA to capture it all correctly; a clear determination of the responsibilities hinges on the role of ICANN ORG. The ICANN ORG position as to their role in data processing seems to change according to blog posts, correspondence and other publications. It is imperative that this be documented and consensus achieved on this point so that we can proceed with setting up the appropriate data sharing</p>	11 (RrSG, Volker Greimann)	Yes/No

<p>agreements. The EPDP team did not engage much in discussing the high number of accredited registrars with resellers who also process data. It may not be feasible to list all the processing activities of the resellers in such a JCA, but it is imperative for the registrants/data subjects we capture it all correctly.</p>		
<p>Data processing agreements need to be kept out of policy. They're contractual and subject to change when new processors etc., are added or others are taken away. Putting this into policy is a bad idea.</p>	13 (Michele Neylon)	Yes/No
<p>Object to Purpose 2, Purpose 6 (object to giving up, absent much more proof of registry involvement, the RDDS data of registrants in disputes involving registries (e.g., PDDRP, RRDRP and future disputes where registrants are not even a party, Purpose 7</p>	14 (Domain Name Rights Coalition)	Yes/No
<p>The transfer of data elements from Registrar to Registry and ICANN needs to be total and not partial; Attention is also drawn to the suggestion to collect registration data using the same simple technology as used by credit card companies to collect card data from customers across merchant websites.</p>	15 (Sivasubramanian Muthusamy)	Yes/No
<p>ICANN indicates that the "Responsible Party" for the collection of data is "ICANN", "Registrars", and "Registries". As a practical matter, only registrars collect these data. Some of that data is for a lawful basis related directly to the relationship between the registrar and the customer and some of that data is also related to current ICANN contractual requirements. If ICANN believes that these data must be collected by the registrar for any reason, ICANN must provide justification for each data element. We note that ICANN has yet to demonstrate a legitimate interest in much of the data collected by registrars.</p> <p>The transfer of data elements from Registrar to Registry and ICANN needs to be total and not partial; Attention is also drawn to the suggestion to collect registration data using the same simple technology as used by credit card companies to collect card data from customers across</p>	16 (Tucows)	Yes/No

merchant websites. ICANN indicates that the "Responsible Party" for the collection of data is "ICANN", "Registrars", and "Registries". As a practical matter, only registrars collect these data. Some of that data is for a lawful basis related directly to the relationship between the registrar and the customer and some of that data is also related to current ICANN contractual requirements. If ICANN believes that these data must be collected by the registrar for any reason, ICANN must provide justification for each data element. We note that ICANN has yet to demonstrate a legitimate interest in much of the data collected by registrars. ICANN indicates that the "Responsible Party" for the transmission of data from a registrar to a registry is "Registrars" and "Registries". As a practical matter, registries are not a responsible party for the transmission of data from the registrar to the registry but may be a contractually-responsible party for such data elements as they require. Each registry must provide justification for each data element. We note that this is not a process that ICANN may simply demand. Some registries, for example, have jurisdictional requirements that allow them to demand certain locational data. We note that the long-time existence of thin Whois outputs such as .com indicate that, in practice, the majority of registries do not require many of the personal data that ICANN has, in the past, indicated are necessary to thick Whois. ICANN indicates that the "Responsible Party" for the disclosure of data is "Registrars" and "Registries". It is not clear to whom this disclosure refers. Registrars and registries have legal requirements under their local laws to disclose what data they have to certain parties upon request (such as subpoena or warrant). However, they cannot be required to collect this data simply to disclose it. ICANN indicates that the "Responsible Party" for the retention of data is "ICANN". We note that this party is, in fact the Data Escrow provider and not ICANN. This function is solely for backup and EBERO purposes—to protect against the catastrophic failure of a registry or registrar.

Registrars and registries are, of course, responsible for their own backups and may also have data retention responsibilities but none of that falls under ICANN's purview. The EPDP recommends that the seven identified purposes for processing gTLD Registration Data form the basis of the new ICANN policy, however only analyzes the purpose in each case and not the data element. As expressed above, the purpose is necessary but not sufficient (and in many cases not necessary) but also necessary is an analysis of whether each piece of personal data included in a data element is necessary to that purpose. We have analyzed each of these above and note that most of them see that ICANN has no purpose for collecting much of these data. Page 89 of the EPDP Initial Report analyzes each data element and comes to the wrong conclusions, as each element is simply indicated as being "necessary". As previously noted, the long-time existence of thin Whois outputs such as .com indicate that ICANN does not need the majority of these data elements—which we note include personal data—to protect the security, stability, and resiliency of the Internet, ICANN's stated goal