**EPDP Team on the Temporary Specification for gTLD Registration Data**

**Final Report Recommendation Summaries – Designation of Consensus**

**Introduction**

As described in the accompanying email, below is the third set of Recommendations and the Chair’s designation as to the level of Consensus on each. Each contains the shorthand title and the wording of the recommendation in the final report. It is important to note that the shorthand title does not appear in the final report, just the recommendation itself plus the accompanying explanation that you can read in the currently posted version of the final report.

***On this third set you will see that I have held off on the designation of selected Recommendations where new language dictates the passing of some time for review or where I believe receipt of additional information such as independent legal advice might resolve a difference. Therefore,***

* ***the first table below lists those Recommendations where a consensus designation has been made***
* ***the second table lists those recommendations where a designation has not been made but a likely designation is indicated; it is intended to make these designations certain by 15 February***

***I have added notes where I thought clarification would be helpful.***

Also, the GNSO Guidelines for working group decision making are included below the tables.

In a slight contravention to the standard practice, I have used the label, “Full Consensus / Consensus” as a signal to the GNSO Council that we have reached a consensus position on these issues but also as a salute to or indiction of the degree of teamwork and compromise that has taken place. Either term has an equivalent on the Council discussion.

***On this third set, please revert to me by the end of Friday if you disagree with my assessment and if you will provide a statement for the final report. Remember that you can support a consensus position and still provide a statement.***

**Cluster #3A– Additional recommendations considered final with Chair-proposed designation**

| **Purpose / Recommendation #** | **Final Language** | **Chair Proposed**  **Designation** | **Notes** |
| --- | --- | --- | --- |
| Recommendation #5 (old #4) - Data elements to be collected by Registrars (incl. Question #2) | The EPDP Team recommends that the data elements listed below (as illustrated in the data elements workbooks in Annex D) are required to be collected by registrars. In the aggregate, this means that the following data elements are to be collected\* where some data elements are automatically generated and, as indicated below, in some cases it is optional for the registered name holder to provide those data elements:  [see table]  For further details, see [complete data elements matrix](https://community.icann.org/download/attachments/96207076/Data%20Elements%20Matrix_v0.7.3.pdf?version=1&modificationDate=1542390110299&api=v2).  For the purpose of the Technical contact, which is optional for the Registered Name Holder to complete (and if the Registrar provides this option), Registrars are to advise the Registered Name Holder at the time of registration that the Registered Name Holder is free to (1) designate the same person as the registrant (or its representative) as the technical contact; or (2) provide contact information which does not directly identify the technical contact person concerned.  \* For those data elements marked as “(optional)”, these are optional for the RNH to provide | Full Consensus / Consensus | Contingent on completion of data elements language. |
| Recommendation #7 (old #5)– Data elements to be transferred from Registrars to Registries | The EPDP Team recommends that the specifically-identified data elements under “[t]ransmission of registration data from Registrar to Registry”, as illustrated in the aggregate data elements workbooks, must be transferred from registrar to registry provided an appropriate legal basis exists and data processing agreement is in place. In the aggregate, these data elements are:  [see table in Final Report] | Full Consensus / Consensus |  |
| Recommendation #9 (old #7) – Contractual Compliance | 1) The EPDP Team recommends that updates are made to the contractual requirements concerning the registration data elements for registries and registrars to transfer to ICANN Org the domain name registration data that they process when required/requested for purpose 5 (Contractual Compliance), consistent with the data elements listed hereunder (for illustrative purposes, please see the workbook that analyzes the purpose to handle contractual compliance monitoring requests, audits, and complaints submitted by Registry Operators, Registrars, Registered Name Holders, and other Internet users in Annex D).  2) The EPDP Team recommends that the following data elements be transferred from registries and registrars to ICANN Org for purpose 5 (Contractual Compliance)\*:  [see table in Final Report]  \* To clarify, the data elements listed here are the aggregate of data elements that ICANN Compliance may request. As noted in the [Summary of ICANN Organization’s Contractual Compliance Team Data Processing Activities](https://community.icann.org/download/attachments/90774122/Summary-Contractual-Compliance-Data-Processing-Activities.pdf?version=1&modificationDate=1542678827000&api=v2) “If the Contractual Compliance Team is unable to validate the issue(s) outlined in a complaint because the publicly available WHOIS data is redacted/masked, it will request the redacted/masked registration data directly from the contracted party (or its representative). In these instances, the Contractual Compliance Team will only request the redacted/masked data elements that are needed to validate the issue(s) outlined in the complaint”. | Full Consnesus / Consensus |  |
| Recommendation #10 (old #8) – Data Redaction | Requirements for processing personal data in public RDDS where processing is subject to GDPR: The EPDP Team recommends that redaction must be applied as follows to the data elements that are collected. Data elements neither redacted nor anonymized must appear via free public based query access:  [see table in Final Report]  The EPDP Team also confirms that Registry Operator and Registrar MAY apply the requirements outlined in this recommendation, as well as recommendation #12, #13, #14 and #15 (i) where it has a commercially reasonable purpose to do so, or (ii) where it is not technically feasible to limit application of these requirements. | Full Consnesus / Consensus | The city field is being held separate from this. |
| Recommendation #12 (old #9) – Organization field | The EPDP Team recommends that:   * The Organization field will be published if that publication is acknowledged or confirmed by the registrant via a process that can be determined by each registrar. If the registered name holder does not confirm the publication, the Organization field can be redacted or the field contents deleted at the option of the registrar. * The implementation will have a phase-in period to allow registrars the time to deal with existing registrations and develop procedures. * In the meantime, registrars will be permitted to redact the Organization Field. * A registry Operator, where they believe it feasible to do so, may publish or redact the Org Field in the RDDS output.   **Implementation advice:** the implementation review team should consider the following implementation model discussed by the EPDP Team:  For existing registrations, the first step will be to confirm the correctness / accuracy of the existing Organization field data.  For the period between the adoption of EPDP policy recommendations and some future “date certain” to be determined by the implementation review:   1. Registrars will redact the Organization field 2. Registrars will contact the registered name holders that have entered data in the Organization field and request review and confirmation that the data is correct. 3. If the registered name holder confirms or corrects the data will remain in the Organization field. 4. If the registrant declines, or does not respond to the query, the Registrar may redact the Organization field, or delete the field contents. If necessary, the registration will be re-assigned to the Registered Name Holder. 5. If Registrar chooses to publish the Registrant Organization field, it will notify these registered name holders that of the “date certain,” the Organization field will be treated as non-personal data and be published, for those Registered Names Holders who have confirmed the data and agreed to publication.   For new registrations, beginning with the “date certain”:  1) New registrations will present some disclosure, disclaimer or confirmation when data is entered in the Organization field. Registrars are free to develop their own process (e.g., opt-in, pop-up advisory or question, locked/grayed out field).  2)    If the registered name holder confirms the data and agrees to publication:   1. The data in the Organization field will be published, 2. The Organization will be listed as the Registered Name Holder. 3. The name of the registered name holder (a natural person) will be listed as the point of contact at the Registrant Organization.   After the implementation phase-in period, the ORG FIELD will no longer be REDACTED by the registrar. | Full Consensus / Consensus |  |
| Recommendation #13 (old #10) – Email communication | 1) The EPDP Team recommends that the Registrar MUST provide an email address or a web form to facilitate email communication with the relevant contact, but MUST NOT identify the contact email address or the contact itself, unless as per Recommendation X, the Registered Name Holder has provided consent for the publication of its email address.  2) The EPDP Team recommends Registrars MUST maintain Log Files, which shall not contain any Personal Information, and which shall contain confirmation that a relay of the communication between the requestor and the Registered Name Holder has occurred, not including the origin, recipient, or content of the message. Such records will be available to ICANN for compliance purposes, upon request. Nothing in this recommendation should be construed to prevent the registrar from taking reasonable and appropriate action to prevent the abuse of the registrar contact process.\*  \* Examples of abuse could include, but are not limited to, requestors purposely flooding the registrar’s system with voluminous and invalid contact requests. This recommendation is not intended to prevent legitimate requests. | Full Consensus / Consensus |  |
| Recommendation #14 – Privacy/Proxy Registrations | In the case of a domain name registration where an “affiliated”\* privacy/proxy service used (e.g. where data associated with a natural person is masked), Registrar (and Registry where applicable) MUST include in the public RDDS and return in response to any query full non-personal RDDS data of the privacy/proxy service, which MAY also include the existing privacy/proxy pseudonymized email.  \* As defined in the [Registrar Accreditation Agreement, Specification on Privacy and Proxy Registrations](https://www.icann.org/resources/pages/approved-with-specs-2013-09-17-en#privacy-proxy): “For any Proxy Service or Privacy Service offered by the Registrar or its Affiliates, including any of Registrar's or its Affiliates' P/P services distributed through Resellers, and used in connection with Registered Names Sponsored by the Registrar, the Registrar and its Affiliates”. | Full Consensus / Consensus |  |
| Recommendation #16 – Geographic Basis | The EPDP Team recommends that Registrars and Registry Operators are permitted to differentiate between registrants on a geographic basis, but are not obligated to do so. | Full Consensus / Consensus |  |
| Recommendation #17 – Natural vs. legal | 1) The EPDP Team recommends that the policy recommendations in this Final Report apply to all gTLD registrations, without requiring Registrars or registries to differentiate between registrations of legal and natural persons, although registrars and registries are permitted to make this distinction.  2)   The EPDP Team recommends that as soon as possible ICANN Org undertakes a study, for which the terms of reference are developed in consultation with the community, that considers:   * The feasibility and costs including both implementation and potential liability costs of differentiating between legal and natural persons; * Examples of industries or other organizations that have successfully differentiated between legal and natural persons; * Privacy risks to registered name holders of differentiating between legal and natural persons; and * Other potential risks (if any) to registrars and registries of not differentiating.   3)   The EPDP Team will discuss the Legal vs. Natural issue in Phase 2. Depending on the timing of the research, its discussions may inform the scope of research and/or use its findings. | Full Consensus / Consensus |  |
| Recommendation #19 (old #13) - Controller Agreement | The EPDP Team recommends that ICANN Org negotiates and enters into required data protection agreements, as appropriate, with the Contracted Parties. In addition to the legally required components of such agreement, the agreement shall specify the responsibilities of the respective parties for the processing activities as described therein. Indemnification clauses should ensure that the risk for certain data processing is borne, to the extent appropriate, by the parties that are involved in the processing. Due consideration should be given to the analysis carried out by the EPDP Team in its Final Report. | Full Consensus / Consensus | The language here reflects the latest comments on the sentence addressing indemnification |
| Recommendation #20 (old #14) - Responsible Parties | During Phase 1 of its work, the EPDP Team documented the data processing activities and responsible parties associated with gTLD registration data. The EPDP Team, accordingly, recommends the inclusion of the data processing activities and responsible parties, outlined below, to be confirmed and documented in the relevant data protection agreements, noting, however, this Recommendation may be affected by the finalization of the necessary agreements that would confirm and define the roles and responsibilities.  [See Table in Final Report] | Full Consensus / Consensus |  |
| Recommendation #27 (old #22) – Impact on other policies | The EPDP Team recommends that as part of the implementation of these policy recommendations, updates are made to the following existing policies / procedures, and any others that may have been omitted, to ensure consistency with these policy recommendations as, for example, a number of these refer to administrative and/or technical contact which will no longer be required data elements:   * [Registry Registration Data Directory Services Consistent Labeling and Display Policy](https://www.icann.org/resources/pages/rdds-labeling-policy-2017-02-01-en) * [Thick WHOIS Transition Policy for .COM, .NET, .JOBS](https://www.icann.org/resources/pages/thick-whois-transition-policy-2017-02-01-en) * [Rules for Uniform Domain Name Dispute Resolution Policy](https://www.icann.org/resources/pages/udrp-rules-2015-03-11-en) * [WHOIS Data Reminder Policy](https://www.icann.org/en/resources/registrars/consensus-policies/wdrp) * [Transfer Policy](https://www.icann.org/resources/pages/transfer-policy-2016-06-01-en) * [Uniform Rapid Suspension System (URS) Rules](http://newgtlds.icann.org/en/applicants/urs/rules-28jun13-en.pdf) * Transfer Dispute Resolution Policy | Full Consensus / Consensus |  |
| Recommendation #29 – Admin Contact Transition | Recognizing that in the case of some existing registrations, there may be an Administrative Contact but no or incomplete Registered Name Holder contact information, the EPDP team recommends that prior to eliminating Administrative Contact fields, all Registrars must ensure that each registration contains Registered Name Holder contact information. | Full Consensus / Consensus |  |

**Cluster #3B– Additional recommendations considered final but final designation pending**

| **Purpose / Recommendation #** | **Final Language** | **Chair Proposed**  **Designation** | **Notes** |
| --- | --- | --- | --- |
| Recommendation #2 –Additional Purposes | The EPDP Team commits to considering in Phase 2 of its work whether additional purposes should be considered to facilitate ICANN’s Office of the Chief Technology Officer (OCTO) to carry out its mission (see <https://www.icann.org/octo>). This consideration should be informed by legal guidance on if/how provisions in the GDPR concerning research apply to ICANN Org and the expression for the need of such pseudonymized data by ICANN. |  | Projected: Strong Support. I am checking with a few groups. |
| Recommendation #11 City Field | The EPDP Team recommends that redaction must be applied as follows to this data element:   | **Data Element** | **Redacted** | | --- | --- | | Registrant Field |  | | * City | Yes\* |   \*The IPC, GAC and BC indicated that they do not support this recommendation for redacting the city field. |  | Waiting for legal advice before a final discussion. |
| Recommendation #15 (new #11) - Data retention | 1. In order to inform its Phase 2 deliberations, the EPDP team recommends that ICANN Org, as a matter of urgency, undertakes a review of all of its active processes and procedures so as to identify and document the instances in which personal data is requested from a registrar beyond the period of the 'life of the registration'. Retention periods for specific data elements should then be identified, documented, and relied upon to establish the required relevant and specific minimum data retention expectations for registrars. The EPDP Team recommends community members be invited to contribute to this data gathering exercise by providing input on other legitimate purposes for which different retention periodsmay be applicable. 2. In the interim, the EPDP team has recognized that the Transfer Dispute Resolution Policy (“TDRP”) has been identified as having the longest justified retention period of one year and has therefore recommended registrars be required to retain only those data elements deemed necessary for the purposes of the TDRP, for a period of one year following the life of the registration plus six months to implement the deletion, i.e., 18 months. This retention is grounded on the stated policy stipulation within the TDRP that claims under the policy may only be raised for a period of 12 months after the alleged breach (FN: see TDRP section 2.2) of the Transfer Policy (FN: see Section 1.15 of TDRP). This retention period does not restrict the ability of registries and registrars to retain data elements provided in Recommendations 4 -7 for other purposes specified in Recommendation 1 for shorter periods.\* 3. The EPDP team recognizes that Contracted Parties may have needs or requirements for different retention periods in line with local law or other requirements. The EPDP team notes that nothing in this recommendation, or in separate ICANN-mandated policy, prohibits contracted parties from setting their own retention periods, which may be longer or shorter than what is specified in ICANN policy. 4. The EPDP team recommends that ICANN Org review its current data retention waiver procedure+ to improve efficiency, request response times, and GDPR compliance, e.g., if a Registrar from a certain jurisdiction is successfully granted a data retention waiver, similarly-situated Registrars might apply the same waiver through a notice procedure and without having to produce a separate application.   \* In Phase 2, the EPDP Team will work on identifying different retention periods for any other purposes, including the purposes identified in this Report.  + For avoidance of doubt, ICANN’s data retention waiver procedure only applies to contracted parties who need to apply for shorter data retention periods. Contracted parties do not need to seek a waiver for longer retention periods for data retention under their own controllership. |  | Projected: Full Consensus / Consensus. Wording developed in 11 Feb meeting. Giving groups some time to review. |
| Recommendation #18 (old #12) – Reasonable access | The EPDP Team recommends that the current requirements in Sections 4.1 and 4.2 of Appendix A to the Temporary Specification in relation to access to non-public registration data, upon expiration are replaced with the criteria below and finalized through the requirements set during the implementation stage, recognizing that work in Phase 2 on a system for Standardized Access to Non-Public Registration Data may further complement, revise, or supersede these requirements. In addition, the EPDP team recommends that when a system for Standardized Access to Non-Public Registration Data is developed, the need for a policy governing Reasonable Requests for Lawful Disclosure outside of that model will be required.  The EPDP Team recommends that the new policy will refer to “Reasonable Requests for Lawful Disclosure of Non-Public Registration Data” or “Reasonable Requests for Lawful Disclosure”, instead of ‘Reasonable Access’ and that Registrar and Registry Operator must process and respond to Reasonable Requests for Lawful Disclosure.  The basic criteria for Reasonable Requests Lawful Disclosure are as follows: First, a Reasonable Request for Lawful Disclosure must follow the format required by the Registrar or Registry Operator and provide the required information, which are to be finalized during the implementation phase (see below). Second, delivery of a properly-formed Reasonable Request for Lawful Disclosure to a Registrar or Registry Operator does NOT require automatic disclosure of information. Third, Registrars and Registry Operators will consider each request on its merits, including the asserted GDPR legal bases.  Registrars and Registry Operators must publish, in a publicly accessible section of their web-site, the mechanism and process for submitting Reasonable Requests for Lawful Disclosure. The mechanism and process should include information on the required format and content of requests, means of providing a response, and the anticipated timeline for responses.  The EPDP Team recommends that criteria for a Reasonable Request for Lawful Disclosure and the requirements for acknowledging receipt of a request and response to such request will be defined as part of the implementation of these policy recommendations but will include at a minimum:  ● Minimum Information Required for Reasonable Requests for Lawful Disclosure:   * Identification of and information about the requestor (including, the nature/type of business entity or individual, Power of Attorney statements, where applicable and relevant); * Information about the legal rights of the requestor and specific rationale and/or justification for the request, (e.g. What is the basis or reason for the request; Why is it necessary for the requestor to ask for this data?); * Affirmation that the request is being made in good faith; * A list of data elements requested by the requestor and why this data is limited to the need; * Agreement to process lawfully any data received in response to the request.   ● Timeline & Criteria for Registrar and Registry Operator Responses:   * Response time for acknowledging receipt of a Reasonable Request for Lawful Disclosure. Without undue delay, but not more than two (2) business days from receipt, unless shown circumstances does not make this possible. * Requirements for what information responses should include. Responses where disclosure of data (in whole or in part) has been denied should include: rationale sufficient for the requestor to understand the reasons for the decision, including, for example, an analysis and explanation of how the balancing test was applied (if applicable). * Logs of Requests, Acknowledgements and Responses should be maintained in accordance with standard business recordation practices so that they are available to be produced as needed including, but not limited to, for audit purposes by ICANN Compliance; * Response time for a response to the requestor will occur without undue delay and in any event within [X business] days of receipt of the request. (A finalized time frame to be set during implementation.) * A separate timeline of [less than X business days] will considered for the response to ‘Urgent’ Reasonable Disclosure Requests, those Requests for which evidence is supplied to show an immediate need for disclosure [time frame to be finalized and criteria set for Urgent requests during implementation].   The EPDP Team recommends that the above be implemented and further work on defining these criteria commences as needed and as soon as possible. |  | Projected: Full consensus / Consensus. Wording developed at 11 Feb meeting. Giving groups some time to review. |
| Recommendation #28 - Implementation Transition Period | The EPDP Team recommends that the effective date of the gTLD Registration Data Policy shall be February 29, 2020. All gTLD Registry Operators and ICANN-accredited registrars will be required to comply with the gTLD Registration Data Policy as of that date. The EPDP Team recommends that until February 29, 2020, registries and registrars are required EITHER to comply with this gTLD Registration Data Policy OR continue to implement measures consistent with the Temporary Specification (as adopted by the ICANN Board on 17 May 2018, and expired on 25 May 2019). Registries and registrars who continue to implement measures compliant with the expired Temporary Specification will not be subject to Compliance penalty specifically related to those measures until February 29, 2020.  The EPDP Team furthermore recommends that, as a matter of urgency, the GNSO Council and ICANN Org, informally convene the Implementation Review Team to allow for the necessary planning to take place before ICANN Board consideration of this Final Report, following which the IRT would be formally convened. |  | Projected: Full Consensus / Consensus. Waiting for some groups to discuss internally. |

**For Reference: GNSO WG Guidelines – SECTION 3.6 Standard Methodology for Making Decisions:**

The Chair will be responsible for designating each position as having one of the following designations:[[1]](#footnote-1)

* + **Full consensus** - when no one in the group speaks against the recommendation in its last readings. This is also sometimes referred to as **Unanimous Consensus.**
  + **Consensus** - a position where only a small minority disagrees, but most agree.[[2]](#footnote-2)
  + **Strong support but significant opposition** - a position where, while most of the group supports a recommendation, there are a significant number of those who do not support it.
  + **Divergence** (also referred to as **No Consensus**) - a position where there isn't strong support for any particular position, but many different points of view. Sometimes this is due to irreconcilable differences of opinion and sometimes it is due to the fact that no one has a particularly strong or convincing viewpoint, but the members of the group agree that it is worth listing the issue in the report nonetheless.
  + **Minority View** - refers to a proposal where a small number of people support the recommendation. This can happen in response to a **Consensus**, **Strong support but significant opposition**, and **No Consensus;** or, it can happen in cases where there is neither support nor opposition to a suggestion made by a small number of individuals.

In cases of **Consensus**, **Strong support but significant opposition**, and **No Consensus**, an effort should be made to document that variance in viewpoint and to present any **Minority View** recommendations that may have been made. Documentation of **Minority View** recommendations normally depends on text offered by the proponent(s). In all cases of **Divergence,** the WG Chair should encourage the submission of minority viewpoint(s).

The recommended method for discovering the consensus level designation on recommendations should work as follows:

1. After the group has discussed an issue long enough for all issues to have been raised, understood and discussed, the Chair, or Co-Chairs, make an evaluation of the designation and publish it for the group to review.
2. After the group has discussed the Chair's estimation of designation, the Chair, or Co-Chairs, should reevaluate and publish an updated evaluation.
3. Steps (i) and (ii) should continue until the Chair/Co-Chairs make an evaluation that is accepted by the group.
4. iv. In rare case, a Chair may decide that the use of polls is reasonable. Some of the reasons for this might be:
   * A decision needs to be made within a time frame that does not allow for the natural process of iteration and settling on a designation to occur.
   * It becomes obvious after several iterations that it is impossible to arrive at a designation. This will happen most often when trying to discriminate between **Consensus** and **Strong support but Significant Opposition** or between **Strong support but Significant Opposition** and **Divergence.**

Care should be taken in using polls that they do not become votes. A liability with the use of polls is that, in situations where there is **Divergence** or **Strong Opposition**, there are often disagreements about the meanings of the poll questions or of the poll results.

Based upon the WG's needs, the Chair may direct that WG participants do not have to have their name explicitly associated with any Full Consensus or Consensus view/position. However, in all other cases and in those cases where a group member represents the minority viewpoint, their name must be explicitly linked, especially in those cases where polls where taken.

**[…]**

Consensus calls should always involve the entire Working Group and, for this reason, should take place on the designated mailing list to ensure that all Working Group members have the opportunity to fully participate in the consensus process. It is the role of the Chair to designate which level of consensus is reached and announce this designation to the Working Group. Member(s) of the Working Group should be able to challenge the designation of the Chair as part of the Working Group discussion.

1. The designations “Full consensus,” “Consensus,” and “Strong support but significant opposition” may also be used to signify levels of “consensus against” a particular recommendation if the consensus position of the Working Group warrants it. If this is the case, any “Minority View” will be in favor of the particular recommendation. It is expected that designations of “consensus against” will be rare and Working Groups are encouraged to draft (and revise) recommendations so that a level of consensus can be expressed “for” rather than “against” a recommendation. However, it is recognized that there can be times when a “consensus against” designation is both appropriate and unavoidable as a practical matter. A “consensus against” position should be distinguished from a position of “Divergence” (or “No Consensus”), which is applied where no consensus has emerged either for or against a recommendation (i.e., the consensus level of the Working Group cannot be described as “Full consensus,” “Consensus” or “Strong support but significant opposition” either for or against a recommendation). [↑](#footnote-ref-1)
2. For those that are unfamiliar with ICANN usage, you may associate the definition of ‘Consensus’ with other definitions and terms of art such as rough consensus or near consensus. It should be noted, however, that in the case of a GNSO PDP originated Working Group, all reports, especially Final Reports, must restrict themselves to the term ‘Consensus’ as this may have legal implications. [↑](#footnote-ref-2)