

CSG COMPARISON OF ICANN POLICY AGAINST NIS-2 REQUIREMENTS

| Issue | <u>EPDP Phase 1</u> | <u>IRT Draft Policy</u> | <u>NIS2 Language</u> |
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| Registries – Thick WHOIS | <p>Rec #7. The EPDP Team recommends that the specifically-identified data elements under “[t]ransmission of registration data from Registrar to Registry”, ... must be transferred from registrar to registry provided an appropriate legal basis exists and data processing agreement is in place. [EXCLUDES CONTACT DATA]</p> | <p><i>Section 7.5 Registrar MAY transfer the following data elements to Registry Operator if supported by the Registry Operator.</i></p> | <p>(109) Maintaining accurate and complete databases of domain name registration data (WHOIS data) and providing lawful access to such data is essential to ensure the security, stability and resilience of the DNS, which in turn contributes to a high common level of cybersecurity across the Union. For that specific purpose, TLD name registries and entities providing domain name registration services should be required to process certain data necessary to achieve that purpose. Such processing should constitute a legal obligation within the meaning of Article 6(1), point (c), of Regulation (EU) 2016/679. That obligation is without prejudice to the possibility to collect domain name registration data for other purposes, for example on the basis of contractual arrangements or legal requirements established in other Union or national law.</p> <p>Article 28: 1. For the purpose of contributing to the security, stability and resilience of the DNS, Member States shall require TLD name registries and entities providing domain name registration services to collect and maintain accurate and complete domain name registration data in a dedicated database with due diligence in accordance with Union data protection law as regards data which are personal data.</p> |
| Purpose Statement | <p>Rec 1, Purpose 2: “Contributing to the maintenance of the security, stability, and resiliency of the Domain Name System in accordance with ICANN’s mission through enabling responses to lawful data disclosure requests.”</p> | None | <p>See Recital 109 (above).</p> <p>(110) The availability and timely accessibility of domain name registration data to legitimate access seekers is essential for the prevention and combating of DNS abuse, and for the prevention and detection of and response to incidents.</p> |

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| <p>Complete and Accurate Database</p> | <p>None</p> | <p>None</p> | <p>(109) - That obligation aims to achieve a complete and accurate set of registration data and should not result in collecting the same data multiple times. The TLD name registries and the entities providing domain name registration services should cooperate with each other in order to avoid the duplication of that task.</p> |
| <p>Administrative Contact</p> | <p>Rec 5: The EPDP Team recommends that the data elements ... (are required to be collected by registrars. <i>[Excludes admin contact]</i>)</p> <p>Rec 29: 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.</p> | <p>Section 6.1 of Draft Policy lists data elements that MUST be collected (excludes admin).</p> <p>Section 6.8: Registrar MAY delete administrative contact data that was collected prior to the effective date of this Policy.</p> | <p>Article 28</p> <p>2. For the purposes of paragraph 1, Member States shall require the database of domain name registration data to contain the necessary information to identify and contact the holders of the domain names and the points of contact administering the domain names under the TLDs. Such information shall include:</p> <ul style="list-style-type: none"> (a) the domain name; (b) the date of registration; (c) the registrant's name, contact email address and telephone number; (d) the contact email address and telephone number of the point of contact administering the domain name in the event that they are different from those of the registrant. |
| <p>Verification of Contacts</p> | <p>Rec 4: The EPDP Team recommends that requirements related to the accuracy of</p> | <p>N/A</p> | <p>Article 28</p> <p>3. Member States shall require the TLD name registries and the entities providing domain name registration services to have policies and procedures, including verification procedures, in place to ensure that the databases referred to in paragraph 1 include accurate and complete information.</p> |

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| | registration data under the current ICANN contracts and consensus policies shall not be affected by this policy. | | Member States shall require such policies and procedures to be made publicly available. |
| Accuracy of Registration Data | Rec 4: The EPDP Team recommends that requirements related to the accuracy of registration data under the current ICANN contracts and consensus policies shall not be affected by this policy. | N/A | (111) In order to ensure the availability of accurate and complete domain name registration data, TLD name registries and entities providing domain name registration services should collect and guarantee the integrity and availability of domain name registration data. In particular, TLD name registries and entities providing domain name registration services should establish policies and procedures to collect and maintain accurate and complete domain name registration data, as well as to prevent and correct inaccurate registration data, in accordance with Union data protection law. ... The TLD name registries and the entities providing domain name registration services should adopt and implement proportionate procedures to verify domain name registration data. Those procedures should reflect the best practices used within the industry and, to the extent possible, the progress made in the field of electronic identification. Examples of verification procedures may include ex ante controls carried out at the time of the registration and ex post controls carried out after the registration. The TLD name registries and the entities providing domain name registration services should, in particular, verify at least one means of contact of the registrant. |
| Legitimate Access Seekers | | N/A | (110) The availability and timely accessibility of domain name registration data to legitimate access seekers is essential for the prevention and combating of DNS abuse, and for the prevention and detection of and response to incidents. Legitimate access seekers are to be understood as any natural or legal person making a request pursuant to Union or national law. They can include authorities that are competent under this Directive and those that are competent under Union or national law for the prevention, investigation, detection or prosecution of criminal offences, and CERTs or CSIRTs. Article 28 |

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| | | | 5. Member States shall require the TLD name registries and the entities providing domain name registration services to provide access to specific domain name registration data upon lawful and duly substantiated requests by legitimate access seekers, in accordance with Union data protection law. |
| Response SLAs for Disclosures | Rec 18 – SLA is 30 days | Section 10.5-6 of Draft Policy is 30 days, with urgent requests subject to 2 business days | Article 28 5. ...Member States shall require the TLD name registries and the entities providing domain name registration services to reply without undue delay and in any event within 72 hours of receipt of any requests for access. Member States shall require policies and procedures with regard to the disclosure of such data to be made publicly available. |
| Publication of Legal Person’s Data | Rec 17: 1) The EPDP Team recommends that Registrars and Registry Operators are permitted to differentiate between registrations of legal and natural persons, but are not obligated to do so. | Section 9.2.2 of Draft Policy makes it optional and allows redactions | (112) TLD name registries and entities providing domain name registration services should be required to make publicly available domain name registration data that fall outside the scope of Union data protection law, such as data that concern legal persons, in line with the preamble of Regulation (EU) 2016/679. For legal persons, the TLD name registries and the entities providing domain name registration services should make publicly available at least the name of the registrant and the contact telephone number. The contact email address should also be published, provided that it does not contain any personal data, such as in the case of email aliases or functional accounts. Article 28 4. Member States shall require the TLD name registries and the entities providing domain name registration services to make publicly available, without undue delay after the registration of a domain name, the domain name registration data which are not personal data. |
| Disclosure of non-public data on request | EPDP Rec 18 – limited to requests- not access, with no guarantees of disclosure for lawful and substantiated requests | Section 10.1-5 of draft policy | (112) ...TLD name registries and entities providing domain name registration services should establish policies and procedures for the publication and disclosure of registration data, including service level agreements to deal with requests for access from legitimate access seekers. Those policies and procedures should take into account, to the extent possible, any guidance and |

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| | | | <p>the standards developed by the multi-stakeholder governance structures at international level.</p> <p>Article 28: 5. Member States shall require the TLD name registries and the entities providing domain name registration services to provide access to specific domain name registration data upon lawful and duly substantiated requests by legitimate access seekers, in accordance with Union data protection law.</p> |
| Access Procedures | | REDRESS is a request system, not an access system | (112) ...The access procedure could include the use of an interface, portal or other technical tool to provide an efficient system for requesting and accessing registration data. |
| Service Level Agreement for Responses | Rec #18 -Response time for a response to the requestor will occur without undue delay, but within maximum of 30 days unless there are exceptional circumstances. | 10.5 Registrar and Registry Operator MUST acknowledge receipt of a Reasonable Request for Lawful Disclosure, which meet the format required by Registrar or Registry Operator, without undue delay, but no more than two (2) business days from receipt and MUST respond without undue delay, but no more than thirty (30) calendar days from acknowledgement absent exceptional circumstances. | Article 28, Section 6: Member States shall require the TLD name registries and the entities providing domain name registration services to reply without undue delay and in any event within 72 hours of receipt of any requests for access. |

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| <p>Reseller Obligations</p> | <p>Optional to collect Reseller Data</p> | <p>Collecting Reseller Information is optional (Draft Policy Section 6.1)</p> | <p>Article 6 Definitions (22) ‘entity providing domain name registration services’ means a registrar or an agent acting on behalf of registrars, such as a privacy or proxy registration service provider or reseller.</p> <p>Article 28</p> <p>[All of the requirements apply equally to resellers because they apply to “entities providing domain name registration services.”]</p> |
| <p>Proxy Obligations</p> | <p>Rec 14 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.</p> | <p>N/A</p> | <p>Article 6 Definitions (22) ‘entity providing domain name registration services’ means a registrar or an agent acting on behalf of registrars, such as a privacy or proxy registration service provider or reseller.</p> <p>Article 28</p> <p>[All of the requirements apply equally to privacy/proxy services because they apply to “entities providing domain name registration services.”]</p> |

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| Charges for Access | None | N/A | (112) Member States should ensure that all types of access to personal and non-personal domain name registration data are free of charge. |
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