

## **EPDP QUIET PERIOD SUMMARY OF COMMENTS AND RECOMMENDED ACTIONS**

### **Recommendations with No Comments in Group Statements**

Purpose 1 – Establish the rights of a Registered Name Holder  
Full Consensus / Consensus

Purpose 3 – Enable communication with RNH  
Full Consensus / Consensus

Purpose 4 – Safeguarding RNH's Registration Data  
Full Consensus / Consensus

Purpose 6 – Resolution of DRPs  
Full Consensus / Consensus

Recommendation #4 – Requirements related to accuracy  
Full Consensus / Consensus

Recommendation #10 – Data Redaction (less "City Name")  
Full Consensus / Consensus

Recommendation #13 – Email Communication  
Full Consensus / Consensus

Recommendation #15 – Data retention  
Full Consensus / Consensus

Recommendation #19 – Controller Agreement  
Full Consensus / Consensus

Recommendation #22 – Instructions for RPM PDP WG  
Full Consensus / Consensus

Recommendation #24 – Transfer Policy  
Full Consensus / Consensus

Recommendation #26 – Data protection agreements with non-Contracted Party entities involved in registration data processing  
Full Consensus / Consensus

Recommendation #28 – Implementation Transition Period  
Full Consensus / Consensus

## **Recommendations with Comments Made, but No Objection**

### **Purpose 5 – Handling Contractual Compliance**

Full Consensus / Consensus

Comment: The RySG would like to record its position that the inclusion of Purpose 5 creates further confusion, and we do not believe that it is strictly necessary to include this Purpose. The RySG notes Purpose 5 would appropriately be considered to be a secondary purpose, compatible with Purpose 1(b). The RySG, however, does not object to this purpose.

Proposed action: Include RySG statement, the provided one or a new one, in the Final Report.

### **Recommendation #3 – Commitment to consider a system for Standardized Access to non-public Registration Data**

Full Consensus / Consensus

Comment: SSAC supports the sentiment behind Recommendation 3, but not the language.

Proposed action: Include SSAC statement, the provided one or a new one, in the Final Report.

### **Recommendation #14 – Privacy/Proxy Registrations**

Full Consensus / Consensus

Comment: RySG: has no issue with Recommendation #14, so long as it is clear that the permissive language that applies to Registrars, applies equally and independently to Registry Operators.

Proposed action: Include RySG statement, the provided one or a new one, in the Final Report.

### **Recommendation #20 – Responsible parties**

Full Consensus / Consensus

Comment: RySG & RrSG: Note that the roles and responsibilities outlined in the body of this Recommendation are not final and are subject to revision following the analysis required to establish the appropriate agreements per Recommendation #19.

Proposed action: Include RySG statement, the provided one or a new one, in the Final Report.

### **Recommendation #25 – Input to Transfer Policy review**

Full Consensus / Consensus

Comment: RySG & RrSG: As written, Recommendation #25 seems redundant to #24.

Proposed action: Include RySG statement, the provided one or a new one, in the Final Report.

## **Recommendations where Changes were Recommended:**

### **Purpose 2 – Maintaining SSR through enabling of lawful access**

#### Comments:

- NCSG provided a record of their concerns that can be included in the report. It does not object to this purpose.
- SSAC noted that language was vague and not actionable, recommended different language. Record of concerns has been included in the report.
- BC / IP recommended different language: “Contributing to the maintenance of the security, stability, and resiliency of the Domain Name System in accordance with ICANN’s mission through enabling lawful responses to reasonable disclosure requests related to lawful data disclosure requests consumer protection, cybersecurity, intellectual property, or law enforcement.”

#### Proposed actions:

- Confirm with NCSG, SSAC and IP / BC which elements of their statements are to be included in the report
- No change to Purpose 2 language in Final Report
- Change designation from Consensus to Strong Support / Significant Opposition

#### Rationale:

- The Team spent approximately 500 person-hours deliberating this issue in both the Los Angeles and Toronto meetings with all deliberations facilitated by CBI, an independent mediation firm with no preconception of the issue or viewpoints of the parties.
- The language was actively debated and represented compromise by all parties, some of whom expressed the viewpoint that the Purpose should be eliminated and some of whom wanted more specific language. This split was mirrored in the public comment.
- The language proposed by IP / BC matches language specifically debated by the team and that was set aside in favour of the current compromise.

### **Purpose 7 – gTLD Registration Policy Eligibility Criteria**

Comments: NCSG: dissents on this purpose

Proposed Action: Change designation from Consensus to Strong Support / Significant Opposition

## **Recommendation #2 – Additional Purposes**

### Comments:

- NCSG dissents on this purpose
- The RySG does not agree to Recommendation 2 and we continue to have concerns regarding its inclusion, both in content and in the procedure that led to its inclusion (pg. 37 - 39). The RySG believes that Recommendation #2 should be removed.
- The RrSG supports the intent of this recommendation, but more clarity is required. We would encourage an OCTO representative to meet with the EPDP team during the next phase of its work and provide more information around what research would be done, what data is required, and how this would be balanced against the privacy rights of the data subjects.

Proposed action: Change designation to Strong Support / Significant Opposition

## **Recommendation #5 – Data Elements to Be Collected by Registrars**

### Comments:

- SSAC concurs with the recommendation with the understanding that Registrars must support / process Tech Contact data if it is provided by the RNH
- ALAC: One of the original bases for WHOIS and among its current usage is to enable contact to address technical issues. The recommendation allows registrars at their option to not collect technical contact information making it difficult for registrants to identify agents to whom they delegate technical responsibility. This impacts a range of users from novices who wish to delegate their web hosting service to address technical issues to large corporations that want 24/7 coverage to address technical matters. Among the reasons for doing so is that they cannot rely on a registrant's declaration that the technical contact will allow such publication, but that ignores that a) only an anonymized address or web form would be published, and b) anyone who signs up for a mailing list is familiar with the technology asking the person who "signed up" whether they really want to do so – the same technology could be used by a registrar in this case.
- RySG: concern about the reference in the accompanying text to the disagreement in relation to whether registrar should be required to offer tech contact to RNH. Proposal to remove reference to Data Elements Workbooks and include updated table. Confirm that accompanying text will remain in the report as it explains why there is no recommendation in relation to requiring Registrars to provide Tech data fields to CPs.
- Bird & Bird provided a memorandum concerning the EDPB Tech Contact "notice" requirement

Proposed actions:

- The EPDP Team to direct that In Phase 2, consider legal guidance provided on how risks could be sufficiently addressed to require these fields to be provided in phase 2.
- There is no recommendation on whether the Tech Contact should be required for Registrars to offer to registrants as there is a split on this.
- The designation will be stated as, “ Full Consensus / Consensus regarding the data elements to be collected and which data elements are optional for Registered Name Holders to provide but note there is no recommendation) on whether the registrar is required to offer the Tech Contact.”

**Recommendation #6 – Consent to Publish Additional Contact Information**

Comments:

- RrSG: Propose amended text for clarity: “The EPDP Team recommends that, as soon as commercially reasonable, Registrar must provide the opportunity for the Registered Name Holder to provide its Consent to publish ~~additional~~ **redacted** contact information in the RDS for the sponsoring registrar.”
- ALAC: concerns that current wording does not include redacted data and email address.

Proposed Actions:

- In response, proposed amended text for clarity: “The EPDP Team recommends that, as soon as commercially reasonable, Registrar must provide the opportunity for the Registered Name Holder to provide its Consent to publish ~~additional~~ **redacted** contact information, **as well as the email address**, in the RDS for the sponsoring registrar.”
- Retain Full Consensus / Consensus designation.

**Recommendation #7 – Data elements to be transferred from Registrars to Registries**

Comments:

- NCSG can accept this but wishes to emphasize that there may be no valid legal justification for transferring all of these data elements from registrars to registries and inclusion of this recommendation does not imply that there is one.
- RySG & RrSG concern about inaccuracies and missing fields in the table. Proposal to remove reference to Data Elements Workbooks and include updated table.

Proposed action:

- None required, incorporation by reference of data workbooks has been eliminated.
- Designation remains Full Consensus / Consensus.

## Recommendation #8 – Escrow Providers

### Comments:

- NCSG: As noted in our objection to Purpose 7, additional data elements identified by registries should not be added to escrow.
  
- RySG, RrSG:
  - Bullet one: The RySG notes that the language has changed from “develop” to “enter into.” This change was not agreed within the EPDP Team. The text should maintain the agreed-upon EPDP position of “enter into.” The EPDP Team’s direction to enter into required Data Processing Agreements with the escrow providers, and not just to develop them, is absolutely necessary for compliance with the requirements of the GDPR.
  - Bullet two: RySG considers this bullet overly complex and the agreed data set is presented in the text of the Recommendation as that was the agreed upon text. The workbooks are informational and should not be incorporated by reference.
  - Bullet 3: Given the work of the EPDP Team, the RySG would note that escrow deposits should be limited to the Minimum Data Set (as defined by the EPDP Team). This Minimum Data Set is comprised of those data elements that are considered to be necessary for the registration of a Domain and as such for the reconstitution of the zone should an Escrow triggering event occur. We note that any further changes that, may be considered necessary, should be deferred and tabled for review, and may be achieved, either by the contracted parties as per the envisaged agreements of Recommendation 19, or at the direction of the GNSO, as per Recommendation 27.

### Proposed Actions:

- Suggest correction: “The EPDP Team recommends that ICANN Org ~~develops~~ **enters into** legally-compliant data protection agreements with the data escrow providers. ‘
  
- Include NCSG and RySG statements, the provided ones or new ones, in the Final Report.
  
- Retain Full Consensus / Consensus designation

## Recommendation #9 – Contractual Compliance

### Comments:

- RySG / RrSG: believes that this Recommendation is unclear. We are unsure how this relates to the specific question as posed in Charter question (e1)
  - The RySG clarifies that the current language within the Contracts already provides the appropriate scope for contractual compliance requests and subsequent transfer (E.g. Art 2.11 new GTLD Base Registry Agreement) .
  - The only change required and thus the original concept and necessity grounding Recommendation 9 should be limited only to the ensuring that there are no unexpected incompatibilities with this intended consensus policy, that allow ICANN compliance to continue to perform their functions. The RySG does remind the ePDP that such matters will be reviewed and discerned as part of the negotiation and execution of the necessary legally binding data protection agreements between ICANN and CPs, which are already envisaged in Recommendation #19.
  - Part 2 of the recommendation as written and the subsequent table creates confusion and is unnecessary considering the point raised above. The RySG therefore recommends the removal of Part 2.
  - Considering that there remain a lack of agreement regarding Tech Contact fields, the RySG notes that their continued inclusion in the tables, without clear qualifying language, is confusing and will likely cause issues at implementation.
  
- ICANN Org: ICANN Contractual Compliance requests confirmation that the scope of Recommendation #9 is limited to registration data elements that appear in WHOIS (and eventually RDAP), and that it does not include data or information other than WHOIS (or RDAP) data elements. With this understanding, ICANN Contractual Compliance requirements for other data and information from contracted parties which is necessary for enforcement of ICANN’s agreements and policies, including the types of data listed in the ICANN Contractual Compliance Data Processing Activities overview, would not be governed by Recommendation #9. Please confirm. Thank you.

### Proposed action:

Consider proposed addition to correct assumption in bullet 1 of Recommendation 9:

- 1.** The EPDP Team recommends that updates, *if needed*, 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.

***(Note: Current language within the Contracts currently provides the appropriate scope for contractual compliance requests and subsequent transfer (e.g. Art 2.11 new gTLD Base Registry Agreement).***

(For illustrative purposes, please see ~~the workbook that analyzes the purpose to handle~~ Annex D - contractual compliance monitoring requests, audits, and complaints submitted by Registry Operators, Registrars, Registered Name Holders, and other Internet users ~~in Annex D.~~)

2. [Remains as is]

Designation remains Full Consensus / Consensus

### **Recommendation #11 – City Field**

Legal advice received from Bird & Bird, additional advice to come after additional research.

Current recommendation: Redact City field for now, take anticipated legal advice into account in Phase 2.

Proposed action: Determine Consensus designation for this approach.

### **Recommendation #12 – Organization field**

Comments:

RySG: suggests the implementation notes be updated to clarify that this is a Registrar obligation. For a Registry the obligation to publish is optional. Further, the final paragraph in the implementation advice does not distinguish Registry and Registrar and should make clear it is optional for Registry. Add note to this recommendation (not part of the recommendation) that clarifies that this is a Registrar obligation. For a Registry to publish is optional, until such time a way has been found that allows for the transfer of consent from Registrar to Registry.

IP / BC: With respect to Organizational field data, Recommendation #12 must be updated as follows – “Implementation advice: the implementation review team should consider the following implementation model discussed by the EPDP Team: ... For the period between the adoption of EPDP policy recommendations and some future ~~“date certain” to be determined by the implementation review~~ ***and one hundred and five (105) days thereafter, consisting of forty-five (45) days for implementation procedural set-up to be devised and agreed to and sixty (60) days for implementation.***”



Proposed action:

- Add note to this recommendation (not part of the recommendation) that clarifies that this is a Registrar obligation. For a Registry to publish is optional, until such time a way has been found that allows for the transfer of consent from Registrar to Registry.
- EPDP Team to consider whether updated implementation guidance is acceptable.
- Designations:
  - Full Consensus / Consensus if new implementation guidance is acceptable
  - Strong Support if existing Recommendation is retained

**Recommendation #16 – Geographic Basis**

Comments:

- SSAC cannot support the recommendation as written.
- NCSG: does not recall the group settling on this position. NCSG believes that ICANN’s rules should be uniformly applicable, therefore registries and registrars should be obliged NOT to differentiate.
- ALAC: The report recommends that contracted parties will not need to perform any level of geographic differentiation due to the difficulty of determining the location of the registrant and the risk of improperly attributing a location. Given that contracted parties have claimed that accuracy of RDDS data is not an issue, the declared location of the registrant should not be questionable. Given that this issue was declared settled and not even deferred until Phase 2, the ALAC has difficulty supporting this. The ALAC is aware that there is an open question regarding whether ICANN may be considered “established” in the EU and the EPDP has requested a legal opinion. Ultimately the European Data Protection Board (EDPB) may rule and that may force the issue, but until that happens, we should not pre-judge the outcome.
- SSAC proposed the following modification: Registrars and Registry Operators must be obligated to differentiate between registrants on a geographic -- i.e. legal jurisdiction basis, after a suitable implementation period.
- IP / BC: Recommends wording change to recommend that, “as soon as possible ICANN Org undertakes a study with respect to geographic distinctions, similar to the study already contemplated in Rec 17 below, and the EPDP Team will determine and resolve the issue of geographic distinction in Phase 2.”

Proposed action:

There is no convergence on this issue. The current text in the Final Report describes the Team discussion that additional research or study might help resolve the complexities with geographical basis distinctions.

Leadership recommends that, in order to preserve a Recommendation on this topic and Charter question, a portion of this discussion can be moved into the recommendation: “Contingent upon the outcome of pending legal advice, ICANN org (with GNSO oversight) will undertake a measured study with respect to geographic distinctions. The first phase would include feasibility and cost assessments and, if found to be feasible, define, a tailored, economical study.”

Designation: the Team can either adopt this as a Consensus Recommendation for additional study or the Recommendation can be deleted.

Rationale:

- There is no convergence on this issue.
- The complexity of this issue has been described in broad terms but not with operational, technical or cost detail.
- Such analysis is likely to be required as other privacy regimes evolve.
- One Team member proposed a measured approach where the initial study would examine the feasibility and cost for a potential follow-on study.

### **Recommendation #17 – Natural vs. legal**

Comments:

- RySG & RrSG: suggest the following modification: 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. (Cf. 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.)
- SSAC: cannot accept the proposed Recommendation and proposed the following modification: “Registrars and Registry Operators must be obligated to differentiate between registrations of legal and natural persons, after a suitable implementation period. Reconsider designation and confirm whether or not the SSAC position has changed the designation.”

- IP / BC: Change third bullet to: “The EPDP Team will ~~discuss~~ **determine and resolve** 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.”~~

Proposed actions:

- EPDP Team to consider both the IP / BC and RySG edits as clarifications.
- Change designation to Strong Support / Significant Opposition based on the SSAC comment.

## Recommendation #18 – Requests for Lawful Disclosures

Comments

- RySG, RrSG: Any policy-mandated timeframe for responding to a disclosure request must be set by individual Registrars, as this is dependent upon a number of factors (including volume/complexity of requests). which may make it impossible to adhere to an externally-determined requirement. The RrSG is hesitant to commit contracted parties to set deadlines without any flexibility. RrSG can commit to a "best effort" timeframe to process the request as fast as possible, whilst still being mindful of the above-mentioned factors.
- RrSG, RySG: do not believe that the task of addressing the timeline to respond to disclosure requests should be deferred to the implementation phase. This does not reflect the consensus of the EPDP Team. We therefore suggest the removal of that suggestion from Recommendation #18.
- NCSG: We recommend deleting recommendation 18 provisions about logs and responding to urgent requests
- IP / BC: Amend the Recommendation to:
  - Second, delivery of a properly-formed Reasonable Request for Lawful Disclosure to a Registrar or Registry Operator does NOT require automatic disclosure of information, **but requires a Registrar or Registry Operator to reasonably consider the request.**
  - Response time for a response to the requestor will occur without undue delay **and where 95% of responses occur within 15 days**, ~~and in any event within [X business] days of receipt of the request. (A finalized time frame to be set during implementation.)~~
  - **A substantially shorter timeline** ~~A separate timeline of [less than X business days] will be 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 suggested response time service level for disclosure requests (95% within 15 days) could be revisited if disclosure request volumes are excessive.***

Proposed actions:

Group discussion to determine if acceptable wording and compromise can be developed with consensus designation to follow.

### **Recommendation #21 – URS / UDRP**

Comments:

RySG: Recommendation #21 lacks a requirement to establish the appropriate agreements (i.e. legally binding data protection agreement) between URS provider and ICANN Org. In addition to the issues noted above at Recommendation #1 / Purpose 6, the RySG notes that this Recommendation really establishes a secondary purpose for those Registry Operators that participate in the URS in line with their agreements. This does not create a mandatory transfer of data Registries. It is understood that this Recommendation does not create a requirement by itself to transfer data from Registrar to Registry. If the data exists at the Registry, it would be provided per section 1, if it does not, the URS provider would go to the Registrar per section 2. As explained below, Recommendation #21 should be moved in the order of recommendation to appear after the current Recommendation #23, as this recommendation is dependent on Recommendation #23. Point out that appropriate agreements with DRPs are covered in recommendation #22.

Proposed Actions:

- Change the order of the recommendations as suggested. (Appropriate agreements with DRPs are covered in recommendation #22.)
- Retain designation as Full Consensus / Consensus.

### **Recommendation #23 – Data processing agreements with dispute resolution providers**

Comment:

RySG: Recommendation #23 should rank in priority to Recommendation #21. The order of the Recommendations should be changed to make #21 dependent upon current #23.

Proposed action: Change order of recommendations as suggested.

## **Recommendation #27 – Impact on other policies**

### Comments:

RySG / RrSG: The RySG does not believe Recommendation #27 reflects consensus of the EPDP Team. This recommendation should be for the GNSO Council to undertake a review of these policies. As worded it directs ICANN to make these changes which is inappropriate and out of ICANN’s mandate. For clarification we suggest the following modifications: “The EPDP Team recommends that the GNSO undertake a review of the below policies , and make updates 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”...

### Proposed action:

- None. The Recommendation is directed to the Council. This review can be undertaken in several ways depending on the urgency required and it is best left to the Council for determining that.
- Retain designation: Full Consensus / Consensus

## **Recommendation #29 – Admin Contact Transition**

### Comments:

RySG: also notes that the “Implementation Guidance” text is not part of the Recommendation as agreed. Its inclusion provides ambiguity and lacks clarity. The RySG recommends it be removed.

### Proposed action:

- There is no implementation guidance attached to this recommendation
- Retain designation: Full Consensus / Consensus.