Summary of the Temporary Specification for gTLD Registration Data

Global Domains Division & Contractual Compliance

Webinar
06 June 2018

ICANN

Agenda

1 Temporary Specification Overview	**2** Transfers	**3** Data Processing Agreements
4 BRDA & RDAP	**5** Q & A	**6** Additional Materials

Disclaimer

This webinar and accompanying materials are provided for the purposes of providing a high-level overview of the Temporary Specification for gTLD Registration Data, and should not be used as formal legal advice. Practical tips included in this presentation are suggestions for compliance with the Temporary Specification, and are not meant to assure a contracted party is in compliance with GDPR. Contracted parties are advised to solicit formal legal counsel for advice applicable to their particular circumstances and business model.

What is the Temporary Specification

- Temporary Specification establishes temporary requirements for how ICANN and its contracted parties will continue to comply with existing contractual requirements and policies related to WHOIS while also complying with the European Union's General Data Protection Regulation (GDPR)

- Approved by ICANN Board of Directors 17 May 2018; Effective 25 May 2018

- May remain effective for up to one (1) year; Board must reaffirm every 90 days (from 25 May 2018)

- Applicable to ALL registrars and registry operators via the Consensus Policies and Temporary Policy Specifications in Registrar Accreditation Agreement and Registry Agreements

Overview

Temporary Specification for gTLD Registration Data

Temporary Specification:
Applicable to ALL Contracted Parties

- All contracted parties must implement the Temporary Specification, regardless of geographic location.

- The Temporary Specification does not modify contracted parties' data collection, retention, transfer and escrow obligations under the Registrar Accreditation Agreement or the Registry Agreements.

- Contracted Parties are not required to differentiate between registrations from natural persons or legal persons (entities, organizations, etc.).

Temporary Specification:
Requirements for Registries & Registrars

Topic	All Registrars	All Registries
Registration Agreement Section 7.1	●	
Data Escrow Agreements Section 5.3, Appendix B	●	●
Data Processing Requirements Section 5.4, Appendix C	●	●
International Data Transfers Section 5.5	●	●
Registration Data Access Protocol Section 5.1, Appendix A	●	●
Registry-Registrar Agreement Section 6		●
Bulk Registration Data Access to ICANN Section 6.1, Appendix F		●

Temporary Specification: Applicability Approaches

For the topics below, the requirements must be applied to those registrations subject to conditions of Appendix A, Section 2.1 and may be applied to any other registrations where it has a commercially reasonable purpose to do so or where it is not technically feasible to limit application.

Topic	Applies To
Redaction of Registration Data per Appendix A, Section 2	Registry Registrar
Consent Option for Additional Publication of Registration Data	Registrar
Web WHOIS Search Capabilities	Registry Registrar
Contact Email Anonymization	Registry - Point to Registrar Registrar

Section 2.1 of Appendix A (RDDS)

- ⊙ Contracted parties must apply Sections 2 & 4 of Appendix A of the Temporary Specification, concerning Registration Data Directory Services, where required by GDPR:

  - ○ the Registrar or Registry Operator is established in the European Economic Area (EEA)

  - ○ the Registrar or Registry Operator is established outside the EEA and offers registration services to Registered Name Holders located in the EEA; or

  - ○ the Registrar or Registry Operator is located outside the EEA and processes personal data included in registration data and where the Registry Operator or Registrar engages a Processor located within the EEA.

Access to Non-Public Registration Data

Topic	Condition	Applies To
UDRP Section 7.3 Appendix E	Where provider presents a complaint involving a registration that does not show full registration data.	Registrar
URS Section 5.6 Appendix D	Where provider presents a complaint involving a registration that does not show full registration data.	Registry Registrar - *if thin registry*
ICANN Contractual Compliance Section 5.7	Upon reasonable notice and request from ICANN for the purpose of investigating compliance-related inquiries and enforcement.	Registry Registrar
Third Party Requests Appendix A Section 4	Request from third parties on the basis of legitimate interests, except where overridden by interests or fundamental rights and freedoms of Registered Name Holder / data subject per GDPR.	Registry Registrar

ICANN Contractual Compliance

- ⊙ ICANN Contractual Compliance will enforce Temporary Specification as of effective date, 25 May 2018.
    - ○ Applies to all ICANN contracted parties
    - ○ Contracted parties' compliance with GDPR is NOT in scope
- ⊙ Appendix A, Section 4.1 of Temporary Specification requires contracted parties to provide third parties (who have legitimate interests) with reasonable access to registration data.
- ⊙ Section 5.7 of Temporary Specification requires contracted parties to provide ICANN Contractual Compliance with reasonable access to registration data upon request, for processing of contractual compliance matters.
- ⊙ Section 4.4.13 of Temporary Specification: processing contractual compliance matters is a legitimate purpose for processing registration data
- ⊙ Complaints and monitoring efforts regarding compliance with Temporary Specification will be processed using same approach and process as other complaint types (https://www.icann.org/resources/pages/approach-processes-2012-02-25-en)

Temporary Specification: Transfers

Transfer Policy

Transfer Policy
- If gaining registrar cannot access current registration data for a name subject to a transfer:
  - Gaining registrar is not required to obtain Form of Authorization (FOA) from Transfer Contact
  - Registrant must re-enter registration data with gaining registrar
  - Gaining registrar is not required to follow the Transfer Policy Change of Registrant process

- Registry Operator must:
  - Verify AuthInfo code provided by gaining registrar

Registrant Safeguards
- If an unauthorized Transfer occurs, remedies for registrants are outlined in the Transfer Dispute Resolution Policy

Required Updates to Data Processing Agreements

Registry-Registrar Agreements – Section 6

⊙ Registry Operator MUST include Data Processing provisions in its RRA concerning the handling of Personal Data in a manner that complies with applicable requirements of Article 28 of the GDPR.

⊙ ICANN, Registries Stakeholder Group, and Registrar Stakeholder Group are working to develop template language for use by all Registries

⊙ If Registries utilize this template language they
  ○ are not required to obtain pre-approval from ICANN
    • the changes will not be processed according to the RRA Amendment Procedure (No RrSG review)
  ○ MUST provide ICANN a copy of the updated agreement via Naming Services portal with a statement certifying the amendment complies provision 6.3.2 of the Temporary Specification

Data Escrow Agreements – Appendix B

- Data Escrow Agreements MUST contain data Processing requirements consistent with Article 28 of the GDPR.

- ICANN is currently working with the approved Data Escrow providers to develop approved language (referenced in Appendix B, Section 3).

- Process to update agreements under development.

Contracted Party Type	Escrow Agreement Type	Expected Change Mechanism
Registrar	3 Way (Rr-DEA-ICANN)	Addendum / Updated Templates
Registry	3 Way (RO-DEA-ICANN)	Addendum
Registry	2 Way (RO-DEA)	Addendum / Updated Templates

Bulk Registration Data Access & Registration Data Access Protocol

Bulk Registration Data Access (BRDA)

- ⊙ New requirement applies to all gTLD registries, with the exception of .name.

- ⊙ Registries are no longer allowed to provide "thick" Bulk Registration Data to ICANN.

- ⊙ Only allowed and required contents for domain names are: domain name, domain name repository object id (roid), Registrar ID (IANA ID), statuses, last updated date, creation date, expiration date, and name server names.

- ⊙ Only allowed and required contents for sponsoring registrars are: registrar name, registrar ID (IANA ID), hostname of registrar WHOIS server, and URL of registrar.

Registration Data Access Protocol (RDAP)

- ⊙ Temporary Specification for gTLD Registration Data requires RDAP implementation for gTLD registries and registrars.

- ⊙ Registries/registrars may implement RDAP "their way" as of now.

- ⊙ A consistent approach via a gTLD RDAP profile(s) is going to be required by the end of 2018.

- ⊙ gTLD RDAP profile(s) to be defined by 31 July 2018.

- ⊙ RDAP SLA and reporting requirements to be defined by 31 July 2018.

- ⊙ Interested in working on the profile, contact the RySG/RrSG leadership.

- ⊙ Registries required to offer "Searchability" will have to offer it in RDAP too.

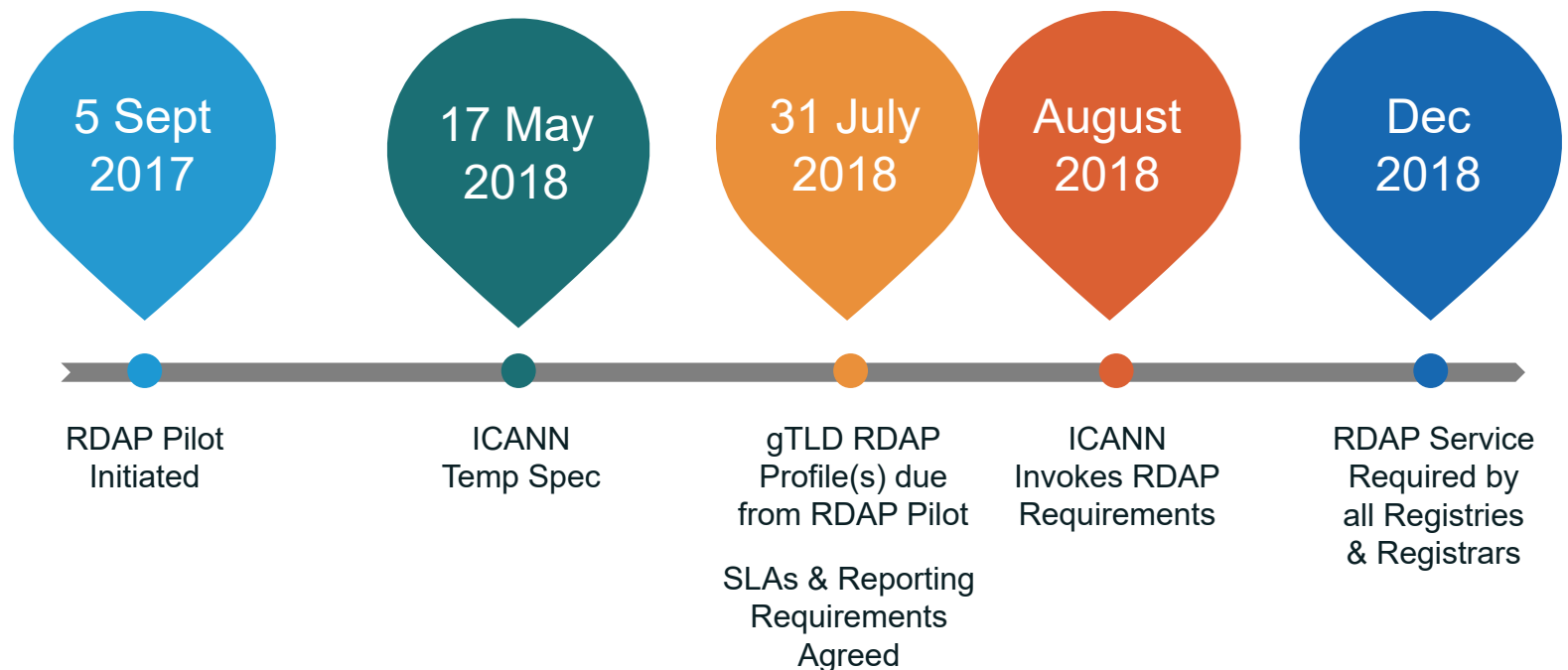- ⊙ RDAP may need to be updated to support searchability adequately.

gTLD RDAP Profile(s)

⊙ Defines common elements to appear in gTLD registry and registrar RDAP responses.

⊙ Contains technical elements (e.g. HTTPS only, TLS requirements, IPv4/6 transport, truncated responses behavior, reference mechanism from registry to registrar, format options for elements).

⊙ Maps contractual and policy requirements to RDAP elements (e.g., which fields to show to whom, which elements to be present, supported types of queries).

Temporary Specification: Requires RDAP

- Registration Data Access Protocol (RDAP) is an alternative protocol to WHOIS for Registration Data Directory Services.

- Temporary Specification requires all gTLD registries and registrars to deploy an RDAP service within 135 days upon notice from ICANN.

- Profile(s) are being defined to enable a consistent approach to RDAP.

5 Sept 2017	17 May 2018	31 July 2018	August 2018	Dec 2018
RDAP Pilot Initiated	ICANN Temp Spec	gTLD RDAP Profile(s) due from RDAP Pilot SLAs & Reporting Requirements Agreed	ICANN Invokes RDAP Requirements	RDAP Service Required by all Registries & Registrars

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How to Prepare for RDAP

- If your organization has not started developing your RDAP service, please start now!

- RFCs and more information available on the RDAP page: https://icann.org/rdap

- Participate in the RDAP Pilot: https://community.icann.org/display/RP/RDAP+Pilot
  - Seven registries covering 100+ gTLDs

- Join the Mailing list: https://mm.icann.org/mailman/listinfo/gtld-tech

- Ask RySG/RrSG leadership if interested in participating in the Profile development, SLA, and reporting requirements

Questions

Thank You and Questions

Visit us at **icann.org**
Email: globalsupport@icann.org

Follow the latest updates regarding Data Protection & Privacy:
https://www.icann.org/dataprotectionprivacy

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Appendix with Additional Materials

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Temporary Specification Impacts Interactions With Registrants

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Registrant Interactions: Overview

- **Changes to Registrant Interactions Required.** Existing registrar practices with respect to registrant interactions must change in a minimum of three (3) areas to comply with the Temporary Specification:
  - **Notices.** Registrars shall provide all notices to each existing, new or renewing Registered Name Holder about data processing practices regardless of registrants being associated with an anonymized email address.
  - **Consent.** As soon as commercially reasonable, registrars that redact publicly available RDDS must provide opportunity for Registered Name Holder to provide its consent to publish additional contact information outlined in Specification in the Registration Data Directory Service (WHOIS). Consent for other data processing activities is also required in order to comply with GDPR.
    - Registrar will need to enable their registrants the ability to modify their consent.

- **Domain Name Transfers.** Gaining registrar will not be required to obtain FOA if it cannot access registration data of name subject to transfer.

Data Subject Notices and Consent

Temporary Specification Requires Transparent Notices

- Contracted parties must take appropriate measures to provide information required by the Temporary Specification in a concise, transparent, intelligible and easily accessible form, using clear and plain language.

Temporary Specification Requires Consent for Display of Additional Contact Data in WHOIS/RDDS

- Consent must be freely given, specific, informed and unambiguous, and must be a statement or a clear affirmative action.

- A request for a data subject's consent to the display of personal data in the RDDS must be:

  - Presented in a manner that is clearly distinguishable from other matters (including other personal data processing based on a legitimate interest)

  - Presented in an intelligible and easily accessible form, using clear and plain language

- Data subject shall have the right to withdraw consent at any time.

Temp Spec Applied: Data Collection & Transfer

Forms of Authorization

⊙ The current Registrar of Record must retain the Form of Authorization (FOA) per the Data Retention Policy within the 2013 Registration Accreditation Agreement.

Consent Processes (Applies to all Registrars)

⊙ ICANN suggests each contract party to refer back to the applicable section of the GDPR (which is also referenced in the Temp Spec) and also consult with their own counsel on what's acceptable.

⊙ A pre-checked box or preselected opt-in option indicating assent is not an affirmative expression of consent; active response is required.

⊙ Data subject's lack of response to a request for consent is never an affirmative expression of consent.

⊙ Email from a data subject asking to display full WHOIS data would appear to be an affirmative expression of consent (for that processing activity only).

⊙ Data subject's checking boxes to affirmatively agree to multiple types of data processing, after being presented with a concise, transparent, intelligible and easily accessible form using clear and unambiguous language, would appear to be an affirmative expression of consent to each processing activity identified by the checkboxes.

Access to Non-Public Data

Access to Non-Public Data: Legitimate Interests

⊙ Users with a legitimate and proportionate purpose for accessing the non-public Personal Data will be able to request such access from the relevant registry and registrar

⊙ Registry Operators and Registrars must:

  ○ provide reasonable access to Personal Data in Registration Data to third parties on the basis of a legitimate interests pursued by the third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the Registered Name Holder or data subject pursuant to Article 6(1)(f) GDPR.

  ○ provide reasonable access to Personal Data in Registration Data to a third party where guidance has been provided that provision of specified elements to a specified class of third party for a specified purpose is lawful by:

    • Article 29 Working Party/European Data Protection Board,

    • court order of a relevant court of competent jurisdiction concerning GDPR,

    • applicable legislation or regulation.

⊙ In the latter case, Registrar and Registry Operator must provide such reasonable access within 90 days of the date ICANN publishes any such guidance, unless legal requirements otherwise demand an earlier implementation.

Access to Non-Public Data:
Domain Name Dispute Resolution

- ⊙ UDRP

  - ○ <u>Registrar</u> must provide the full Registration Data for each of the specified domain names, upon the UDRP provider notifying the Registrar of the existence of a complaint, or participate in another mechanism to provide the full Registration Data to the Provider as specified by ICANN.

- ⊙ URS

  - ○ <u>Registry Operator</u> (RO) must provide the full Registration Data for each of the specified domain names, upon the URS provider notifying the RO (or appointed BERO) of the existence of a complaint, or participate in another mechanism to provide the full Registration Data to the Provider as specified by ICANN.

  - ○ For thin registries, the RO must provide the available Registration Data to the URS Provider.

Access to Non-Public Data: Contractual Compliance

Registry Operator and Registrar must provide reasonable access to Registration Data to ICANN upon reasonable notice and request from ICANN for the purpose of investigating compliance-related inquiries and enforcement of:

⊙ Registry Agreement

⊙ Registrar Accreditation Agreement

⊙ ICANN Consensus Policies