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# Public Comment Summary Report

## Data Processing Specifications for ICANN-Accredited Registries and Registrars

**Open for Submissions Date:**

Monday, 29 July 2024

**Closed for Submissions Date:**

Monday, 09 September 2024

**Summary Report Due Date:**

Monday, 14 October 2024

**Category:** Operations

**Requester:** ICANN org

**ICANN org Contact(s):** [cyrus.jamnejad@icann.org](mailto:cyrus.jamnejad@icann.org)

**Open Proceeding Link:** <https://www.icann.org/en/public-comment/proceeding/data-processing-specification-for-icann-accredited-registries-and-registrars-29-07-2024>

**Outcome:**

ICANN received eight (8) comments on the proposed Data Processing Specification (DPS) for accredited registrars and generic top-level domain (gTLD) registry operators: three (3) from organizations and five (5) from individuals. Three (3) of the comments received were not directly related to the DPS. Most commenters stressed the importance of, and need to, safeguard personal data to comply with applicable data protection laws, and to ensure reasonable access to gTLD registration data. Many noted the need for registrars and registry operators (collectively, the “contracted parties”) to provide gTLD registration data access in compliance with their agreements with ICANN and applicable ICANN Consensus Policies and Temporary Policies, as this access is integral to a robust and resilient Domain Name System (DNS). At the same time, commenters recognized the need for contracted parties to ensure their processing of gTLD registration data complies with local law, which may require them to limit data collection and dissemination.

ICANN org appreciates the participation in this proceeding and is grateful to those who provided their feedback and suggestions. ICANN org will consider suggestions made during the Public Comment period, in consultation with the Contracted Party House negotiation team, to determine whether any changes are necessary or desirable prior to finalizing the DPS for use by the contracted parties.

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## Section 1: What We Received Input On

ICANN sought community input on draft Data Processing Specifications (DPS) applicable to the Registrar Accreditation Agreement (RAA) and Registry Agreement (RA). Pursuant to the [Phase 1 Recommendations 19 and 20](#) of the Expedited Policy Development Process (EPDP) on the Temporary Specification for gTLD Registration Data, ICANN org and a team convened by the Contracted Party House negotiated the terms of the DPS for which Public Comment was sought.

ICANN is preparing to implement the DPS so contracted parties can begin using it during the Registration Data Policy transition period (21 August 2024 - 20 August 2025). ICANN org will consider suggestions made during the Public Comment period, in consultation with the Contracted Party House negotiation team, to determine whether any changes are necessary or desirable prior to finalizing the DPS for use by the contracted parties.

### **DPS Scope Is Limited to Registration Data Policy**

[As noted in the call for Public Comments](#), the DPS was drafted to implement the EPDP Phase 1 Policy Recommendations. As such, the scope of the DPS is limited. The DPS provides a contractual framework to enable the processing of gTLD registration data contemplated in the [Registration Data Policy](#) to be performed in compliance with applicable data protection law.

The DPS will not require the contracted parties to provide ICANN with greater access to gTLD registration data than the access currently required under applicable ICANN agreements and policies. For example, a DPS between ICANN and a registrar will not require the registrar to provide ICANN with unfettered access to any gTLD registration data held by the registrar because this would exceed the scope of access required under the RAA. The RAA's limitation on ICANN's access to gTLD registration data collected by registrars was specifically noted in the call for Public Comments because community discussions concerning registration data accuracy have at times, identified the implementation of this data protection agreement between ICANN and registrars as a prerequisite for efforts by ICANN to study registration data accuracy.

In addition, the DPS is not drafted to account for the processing of data that ICANN and contracted parties may process pursuant to current or future Consensus Policy and contract requirements beyond the Registration Data Policy. For example, the [EPDP Phase 2 recommendations](#) for a System for Standardized Access/Disclosure to Non-Public gTLD Registration Data (SSAD), which are pending Board consideration, envision requirements for ICANN's and contracted parties' processing of requestor contact information in the course of intake and routing of SSAD requests. And, the [recommendations of the Privacy and Proxy Service Providers Accreditation Issues PDP Working Group](#) (pending implementation) would put into place requirements for privacy and proxy service providers' processing of customer contact data. The DPS currently does not encompass these data processing operations. However, if and when those recommendations are implemented, the DPS could be adapted to accommodate those new policies or other policy recommendations or contract requirements that are developed and implemented in the future.

### **Data Processing Specification Overview**

- DPS will be a new, optional Specification to the RA and RAA
- DPS is an agreement between parties who, independent of each other, control their own processing of personal data that is contemplated by the Registration Data Policy (agreement between “independent controllers”)
- Per the Registration Data Policy, contracted parties must request to enter into the DPS with ICANN if the contracted party determines that the DPS is required for its processing of registration data to comply with applicable law
- DPS sets out high-level data protection requirements for the processing of gTLD registration data (“Personal Registration Data”)
- DPS requires parties to comply with applicable law
- DPS describes “who does what” with gTLD registration data under Registration Data Policy
- DPS is drafted to accommodate contracted parties’ efforts to comply with any applicable data protection law (not limited, for example, to the European General Data Protection Regulation (GDPR))

The DPS is not:

- DPS is not a “joint controller arrangement”
- DPS is not a “Data Processing Agreement”
- DPS does not require contracted parties to provide ICANN with greater data access than that required under the RA/RAA and applicable Consensus Policies and Temporary Policies

## Section 2: Submissions

### Organizations and Groups:

Name	Submitted by	Initials
ICANN Business Constituency (BC)	BC Policy	BC
ICANN Registrar Stakeholder Group (RrSG)	Sarah Wyld	RS
NIC Latin America - LatAmm.com	LatAmm	LA

### Individuals:

Name	Affiliation (if provided)	Initials
Karin Canales		KC
Sanjay Tiwari	Asxit LLC	ST
Sundram Tiwari	Asxit LLC	SU
Nikesh B Simmandree		NB
Prince Andrew Livingstone Zutah	International Online Safety Corp. (IOSCORP)	PA

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## Section 3: Summary of Submissions

As noted above, ICANN received eight (8) comments from the community on the proposed Data Processing Specification (DPS). Three (3) of the comments received were not directly related to the DPS. Overall, commenters voiced support for security and clarity surrounding gTLD registration data processing. Some commenters expressed their concerns regarding access to data, while others voiced support for the document as written.

ICANN org would like to thank all the contributors for their valuable suggestions and feedback to the proposed DPS. Each comment has been thoroughly reviewed and a categorized summary of ICANN org's analysis is provided below by category.

Following a review of all the comments, ICANN org organized the comments submitted into the following general categories:

1. The Importance of Data Protection
2. Support for the DPS
3. Suggestions for the DPS

This Public Comment summary and analysis report includes a non-exhaustive collection of Public Comments related to the above listed categories, with analysis of the comments provided immediately following each category. The community is encouraged to review the [Public Comment page](#) for the full text of each submission to this proceeding.

### 1. The Importance of Data Protection

#### COMMENTS SUMMARY

*ICANN received comments from 4 commenters (PA, NB, BC, LA) that highlighted the importance of compliance with relevant data protection laws, particularly the European Union's General Data Protection Regulation (GDPR).*

- “Emphasis on compliance with data protection laws (e.g., GDPR) is crucial. The specifications must include robust mechanisms for data minimization, purpose limitation, and security measures to safeguard registrant data.” (PA)
- “For transparency, ICANN's data access rights is important to prevent data breaches, ambiguities and ensure compliance but need to take into consideration and limited to data protection regulations like GDPR.” (NB)
- “Data protection is a fundamental principle that underpins trust in the digital economy. The BC fully supports ICANN's commitment to safeguarding personal data and ensuring that processing of registration data complies with applicable laws. We recognize these efforts are essential for legal compliance and for maintaining the integrity and stability of the global domain name system (DNS).” (BC)
- *translation from Portuguese:* “the right to access data must be transparent and objective, but on the other hand, legal aspects such as Data Protection Laws must be considered.” (LA)

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## ANALYSIS OF COMMENTS

ICANN org notes and agrees with the need to ensure policies and processes that effectively balance the need for a stable and secure DNS with safeguards for data and compliance with national laws. It is with these interests in mind that ICANN org and the Contracted Party House (CPH) negotiating team worked together to determine the form and substance of the DPS.

### 2. Support for the DPS

#### COMMENTS SUMMARY

*ICANN received 3 comments supporting the proposed Data Processing Specifications.*

- “This is a significant undertaking by ICANN org and Contracted Parties and the RrSG appreciates the dedication of the team in addressing this matter. The RrSG is supportive of the Data Processing Specification as drafted.” (SW)
- “The draft DPS is a vital step towards ensuring data protection and compliance within the gTLD ecosystem.” (PA)
- “The BC recognizes the complex challenges involved in balancing privacy with the need for access to gTLD registration data, and we commend the collaborative efforts of ICANN and the Contracted Party House in developing these draft specifications.” (BC)

#### ANALYSIS OF COMMENTS

Of the five comments received that directly related to the DPS, three noted support for the DPS. The comment from the Registrar Stakeholder Group supported the draft as written. The comments from PA and the BC were supportive but came with notes for improvements that are addressed in section 3 below. As noted above, ICANN org is mindful of the critical importance of data protection and has worked with the contracted parties to design a functional specification to be added to the RA and RAA. The DPS, as proposed for Public Comment, will enable the contracted parties to adhere to ICANN agreements and policies while also having flexibility to implement measures to comply with local law in a manner suited to each entity’s business model and data protection compliance obligations and strategy.

### 3. Suggestions for the DPS

#### COMMENTS SUMMARY

Comments surrounding potential modifications to the DPS draft language, summarized below, centered on seven (7) main themes: Suggestions to remove perceived ambiguity, indemnification of the parties, fitness for purpose, access to data, ICANN’s ability to enforce contractual and policy requirements, recognition of local laws and purposes for processing, and financial implications. ICANN org will review the DPS, including the specific language flagged in the Public Comments, in consultation with the CPH negotiation team to determine if any changes are necessary or desirable prior to finalizing the DPS for implementation.

For ease of understanding, comments in this section have been grouped together by topic:

- **Suggestions to remove perceived ambiguity:**

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- “The DPS should ensure clear delineation of responsibilities among ICANN, registries, and registrars. It must explicitly state each party's obligations to prevent ambiguities that could lead to non-compliance or misinterpretation.” (PA)
  - Section 1.6 “Personal Data” should remove “or legal person”. Section 1.10 “Service Provider” should specifically include third parties that are mentioned in the Agreements, such as privacy/proxy providers, resellers, and escrow agents, all of which are required to collect, transfer, process, and disclose data.” “The DPS should provide clear definitions of key terms and the scope of data processing activities. This will reduce ambiguity and ensure consistent interpretation and application across all parties.” (BC)

#### *ANALYSIS OF COMMENTS*

Commenters noted the need for clarity and precision of language within the DPS in order to reduce ambiguity and ensure consistent interpretation and application. ICANN org agrees that the language of the DPS must be clear, to prevent ambiguities, non-compliance, or misinterpretation.

- **Indemnification:**

- “Including indemnification clauses in the DPS is critical. These clauses should ensure that the parties responsible for data breaches or non-compliance bear the appropriate liabilities.” (PA)

#### *ANALYSIS OF COMMENTS*

One commenter noted a need for appropriate indemnification clauses in the DPS. EPDP Phase 1 recommendation 19 states, in pertinent part, “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.”

ICANN org notes that applicable laws impose obligations, liability, and associated risks to parties who process personal data. This is not impacted by the terms of the DPS. With respect to the proposed terms of the DPS, indemnification was a topic of robust discussion throughout the DPS negotiation process. ICANN org and the CPH negotiation team agreed, after extensive negotiation and consultation with relevant stakeholders, to the following approach to be proposed for the DPS during Public Comment:

- No indemnification obligations in the registrar version of the DPS (mirroring RAA approach);
- In registry DPS, an approach that is similar, but not identical to, the approach taken in the base gTLD RA:
  - “Except as provided in Section 10.3 below, and solely with respect to third party claims arising from or in connection with Registry Operator’s actual or alleged breach of this Data Processing Specification, Registry Operator’s aggregate monetary indemnification obligations under Section 7.1 of the Agreement will be limited to the greater of (i) the fees paid to ICANN during the preceding twelve-month period (excluding the Variable Registry-Level Fee set forth in Section 6.3 of the Agreement, if any), or (ii) the amount of \$5 million USD.” (see registry DPS at Section 10.2).
  - “Notwithstanding anything to the contrary elsewhere in this Data Processing Specification or the Agreement, any limitation on indemnification obligations under this Section 10 will not apply to any claims (i) arising from or related to any act or omission involving the gross negligence, willful misconduct, or fraud on the



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part of the Registry Operator, or (ii) directly arising from a failure of the Registry Operator to comply with laws applicable to the Registry Operator.” (see registry DPS at Section 10.3).

- **Fitness for purpose and future modifications;**
  - “The DPS should incorporate a mechanism for periodic review and updates based on feedback from stakeholders and evolving data protection regulations. This will ensure the specifications remain relevant and effective.” (PA)
  - “The BC suggests that ICANN consider incorporating provisions that allow for adjustments to the DPS without requiring extensive renegotiations, ensuring that the specifications remain relevant and compliant with future legal developments.” (BC)
  - “The BC recommends ongoing engagement with all stakeholders, including the business community, to refine and improve the DPS. Regular consultations will help ensure that the DPS continues to meet the diverse needs of the ICANN community while remaining compliant with global data protection standards.” “The DPS should include a mechanism for regular review and updates to ensure it remains aligned with evolving data protection laws and the needs of the ICANN community.” (BC)

#### *ANALYSIS OF COMMENTS*

Against the backdrop of existing, emerging, and potentially changing global data protection laws, ICANN org and the CPH drafted the DPS in a manner that will enable contracted parties to provide data to ICANN as required per the RAA and RA while maintaining compliance with applicable laws. The foundation of the DPS is built upon the concept that the parties must comply with local law, whatever that law happens to require. Drafted in such a way, ICANN org expects that modifications will be few. Further, the DPS has built-in processes for negotiated amendments to the DPS (similar to the global amendment process for the base agreements), bilateral negotiations where necessary due to local law, and a trigger for negotiation of updates if Consensus Policy recommendations adopted by the ICANN Board of Directors have potential relevance to the DPS.

- **Access to data:**
  - “The BC is particularly concerned about how the DPS might impact access to registration data for legitimate purposes, such as cybersecurity, intellectual property protection, and law enforcement. We urge ICANN to ensure that the DPS includes clear and consistent guidelines for access to data, balancing privacy considerations with the need for transparency and security.” (BC)
  - “Even if a registrar approves a legitimate request for registration data, the effectiveness of this access is nullified if the relevant data is obscured by a P/P service that is not contractually obligated to honor the registrar's determination. For businesses, this creates a significant barrier to protecting intellectual property, enforcing security measures, and responding to legal inquiries. We recommend that ICANN include specific obligations for P/P services within the DPS to ensure that they support the registrar's decisions, thereby maintaining a balance between privacy and the legitimate needs of businesses for data transparency.” (BC)
  - “ICANN should explore the possibility of implementing tiered access mechanisms that allow different levels of data access based on the requester's purpose and

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legal standing. This approach would help balance the need for privacy with the legitimate needs of various stakeholders, including businesses that rely on registration data for security and enforcement purposes.” (BC)

- “Currently, there is no mention of the transfer of personal data to ICANN regarding the management and operation of the Registration Directory Registration System (RDRS). Yet ICANN is unable to access the personal data to resolve complaints or issues related to the RDRS (which is not a consensus policy, but a pilot system). Ensuring that ICANN is able to access this information to be able to respond to complaints or operational issues even if the system is a voluntary one should be separately addressed in the DPS.” (BC)
- “The DPS should clarify ICANN's access to gTLD registration data. It is essential that ICANN's data access rights are strictly limited to what is necessary for fulfilling its oversight functions, avoiding any unnecessary intrusion into registrant privacy.” (PA)

#### *ANALYSIS OF COMMENTS*

Several comments expressed the need for lawful access to gTLD registration data by requestors other than ICANN and a desire for the DPS to facilitate this effort. ICANN org notes that the purpose of the DPS is not to modify requirements under the RA, RAA, or applicable Consensus Policies or Temporary Policies, but, instead, to implement a contract framework to facilitate compliance with applicable agreements and policies and applicable law. If the community wishes to require the contracted parties to transfer more data to ICANN, or to impose additional requirements concerning the contracted parties' provision of access to registration data to third parties, the Generic Names Supporting Organization (GNSO) processes provide a mechanism to develop ICANN Consensus Policy recommendations on those issues.

- **ICANN's ability to enforce compliance with contractual and policy requirements**
  - “We note that the DPS does not include obligations to transfer all data requested by ICANN for the purposes of conducting audits of the contracted parties under the applicable contracts or consensus policies. In addition, the DPS does not obligate the contracted parties to transfer all data requested by ICANN to conduct research or surveys in support of its consensus policy processes, such as the accuracy studies that have recently been put on hold.” (BC)
  - “The DPS must also create the necessary transfers to enable Thick Whois under ICANN's recently adopted consensus policy. See Section 7.4 of the new Registration Data Policy... Since the DPS will serve as the Data Processing Agreement for this policy, it needs to ensure that each of these data elements will be transferred to the applicable registry from the registrar in accordance with the applicable consensus policy.” (BC)
  - “We encourage ICANN to establish robust accountability mechanisms to ensure that all parties involved adhere to the 3 agreed-upon data processing standards. This includes regular reporting and audits to verify compliance.” (BC)
  - “The BC advocates for the inclusion of a clear and efficient dispute resolution process within the DPS.” (BC)

#### *ANALYSIS OF COMMENTS*

To reiterate the prior section, the DPS is not intended to create new contractual obligations as to when the data must be transferred or access provided. The requirements for contracted parties



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to transfer data to ICANN, whether for audits or any other purpose, are defined in the RA and RAA, not the DPS.

One commenter said that the “DPS must also create the necessary transfers to enable Thick Whois under ICANN’s recently adopted consensus policy...”, referencing section 7.4 of the Registration Data Policy. The Registration Data Policy, not the DPS, sets out the requirements for when registrars must transfer registration data to the registry operator. The DPS is a contractual mechanism to facilitate lawful data processing by every party that signs onto the DPS. The DPS provides a mechanism to implement contractual safeguards between each contracted party that signs it and ICANN. The DPS is a two-party agreement between the contracted party and ICANN, not between the contracted parties. The agreement between the registry operator and the registrar (the registry operator’s Registry-Registrar Agreement), not the DPS, would provide a mechanism to implement contractual safeguards for data transfers between the contracted parties.

- **Recognition of local laws and purposes for processing:**

- “The DPS should also enable the transfer and processing of registrant data in order to comply with applicable law or for data transfers allowed under GDPR such as under Article 49 (1) (e) when they are “necessary for the establishment, exercise, or defense of legal claims... As a result, an additional purpose should be added (2.1.10) to comply with the requirements of applicable law to collect, maintain, process, verify, disclose, transfer, and publish any registration data (including the data of the beneficial user or customer of a privacy or proxy service) that is specified under applicable law. Also, Section 2.1.3 should be updated to add “ or in accordance with applicable law, such as NIS2” at the end thereof. This obligation to comply with NIS2 (as applicable) should recognize that the parties to the DPS may transfer and enable the processing of data by service providers for specific requirements under NIS2, such as to verify or audit the accuracy of the contact data.” (BC)
- “Section 4 addresses the processing of registration data among the contracted parties and ICANN to comply with privacy laws, but does not address situations where transfers are to take place for reasons as allowed under the DPA. For example, data may be transferred to service providers used by ICANN to conduct its security operations, research, or conduct surveys. As a result, Sections 4.3 - 4.5 should be modified to reference the purposes allowed under the Agreement, the DPS, and to comply with applicable laws, including NIS2.” (BC)
- “Section 7 should include a new Section 7.5 that tracks the accuracy obligations of GDPR under Article 5(d) that personal data be “accurate, and where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay.” (BC)
- Section 1.1 “Applicable Laws” should specifically include NIS2 since it directly affects the applicability of GDPR. (BC)

#### *ANALYSIS OF COMMENTS*

Commenters stressed the importance of adherence to local law within the context of a robust data protection program. Some focused on the need to include additional language for specific purposes and laws. As noted above, the foundation of the DPS is built upon the fundamental principle that all parties (whether they sign the DPS or not), must comply with applicable law.

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The DPS includes each “purpose for processing” identified by the EPDP Phase 1 team. The DPS and the Registration Data Policy also make clear that the parties may process gTLD registration data for their own purposes (which could include their own obligations to comply with local law) so long as this processing is not contrary to the requirements of the applicable agreements and policies.

- **Financial implications:**
  - “The BC requests that ICANN carefully assess whether the proposed DPS imposes undue financial burdens on contracted parties and consider ways to mitigate these costs.”(BC)
  - “ICANN should consider developing cost mitigation strategies for the implementation of the DPS.” (BC)

#### *ANALYSIS OF COMMENTS*

Commenters noted the importance of cost mitigation and potential burdens of effective implementation of the DPS. ICANN org notes that the org and the Contracted Party House negotiating team considered cost and time requirements throughout discussions, and are reflected in the language that has been agreed upon. The DPS requires the parties to comply with applicable law (which the parties are already required to do, whether they sign the DPS or not). It is unclear how the act of signing the DPS would directly impose significant additional burdens onto the contracted parties.

## Section 4: Next Steps

Following the completion of the Public Comment Process, ICANN org will consider suggestions made during the Public Comment period, in consultation with the Contracted Party House negotiation team, to determine whether any changes are necessary or desirable prior to finalizing the DPS for use by the contracted parties.

Once the DPS is finalized, ICANN org will make the Data Processing Specification available to gTLD registry operators and registrars for incorporation into their contracts with ICANN.