



29 November, 2017

RE: General Data Protection Regulation (GDPR) concerns

Paul Diaz  
Chair, gTLD Registries Stakeholder Group

Graeme Bunton  
Chair, Registrars Stakeholder Group

Dear Mr. Diaz and Mr. Bunton;

Thank you for your letter of 13 October 2017 and the subsequent correspondence from 17 November 2017 which have been posted to the ICANN Correspondence [page](#). We recognize and share the ICANN contracted parties' concerns regarding the potential impact of the European Union's General Data Protection Regulation (GDPR) on WHOIS and other related requirements in our contractual agreements. Our reply herein reflects discussions of these topics at ICANN60 as well as developments related to the GDPR since the meeting.

As noted also at ICANN60, based on initial reviews and communications, including with some data protection agencies (DPAs), we believe that compliance with the GDPR will have an impact on the handling of domain registration data. We also acknowledge the point in your 17 November 2017 letter that other ICANN contractual requirements may also be impacted. The main purpose of the current community discussions and legal analysis is to determine the scope of the impact. The ICANN org is committed to working with the community to find the right balance between the current contractual requirements and compliance with local laws. As you note in your letter, a collaborative effort to develop potential solutions is indeed the best way forward.

As you may be aware, the ICANN org has commissioned an independent legal analysis from European law firm Hamilton. A [draft](#) of the initial analysis was shared for community feedback on 18 October 2017. The memo focuses on potentially challenging areas with contractual requirements for registries and registrars to handle domain registration data including open, publicly available WHOIS services and concludes that the current open, publicly available WHOIS services may not remain unchanged. Since the publication of the first analysis we have been collecting additional questions from the community as well as the organization. On 15 November 2017, [a subsequent batch of questions](#) was submitted to Hamilton to develop the next iteration of this analysis. As noted in the [17 November 2017 blog](#), we anticipate that the next phase of the Hamilton analysis will help clarify possible models for compliance by all parties.

Acknowledging this period of uncertainty, on 2 November 2017 the ICANN org published a [statement](#) indicating that ICANN Contractual Compliance and Consumer Safeguards team will consider deferring taking action against any registry or registrar for noncompliance with

contractual obligations related to the handling of registration data under certain conditions. The action comes in direct response to those who have expressed concerns regarding the ability of registries and registrars to comply with the GDPR and their WHOIS and other contractual requirements. To that end, we urge the gTLD Registries and Registrar Stakeholder Groups to work together to provide a single submission with one or more potential solutions that the contracted parties could support and which they believe are both operationally feasible and compliant with the GDPR. To support that effort, the ICANN org will be publishing guidance to the community regarding how to submit a proposal in the coming weeks. We note your request for this guidance no later than 22 December 2017 and we are working to meet that date.

We understand groups of registries and registrars are actively working together to develop potential models. We encourage this effort toward a common, interoperable solution and look forward to the submission. If there is anything ICANN org can do to support this effort, please let us know how we can help.

In parallel, the ICANN org continues to engage with stakeholders on the possible implications of the legislation on existing registration data policy(ies). We have reached out to the leadership of ICANN's Supporting Organizations (SO) and Advisory Committees (AC) to provide an opportunity for continued engagement and additional perspectives. In addition, we have engaged with the DPAs in Europe to gain a better understanding of the relevant aspects of the GDPR as it relates to the organization's work, as well as our contracts with registries and registrars. Finally, the participation by the contracted parties at the recent [ICANN60 cross-community session](#) provided important context to these discussions for our wider community.

We expect that the release of the initial legal analysis and the next iteration will continue to fuel community discussions. Until then, the ICANN org will continue to work with the community, including the contracted parties, and to keep the community apprised of the GDPR discussions with regular updates to ICANN's data protection/privacy webpage. We look forward to continuing to work with you and the community on this important topic.

Sincerely,



Akram Atallah



Theresa Swinehart