

26 April 2019

Pearse O'Donohue
Director, Future Networks, Directorate General for Communications Networks, Content and
Technology
European Commission

RE: Letter of 17 April 2019 in response to the public comment period initiated by the Board of
ICANN directors seeking to obtain community input with respect to the final policy
recommendations of the GNSO EPDP on the Temporary Specification for gTLD Registration
Data

Dear Mr. O'Donohue,

Thank you for [submitting your comments on 17 April 2019](#) regarding the Policy
Recommendations of the Expedited Policy Development Process (EPDP) on the Temporary
Specification for gTLD Registration Data. I would like to express our appreciation for the
Commission's contributions to the EPDP team and through the Governmental Advisory
Committee, to update ICANN's policies and procedures with respect to domain name registrant
information.

At its 3-5 May meeting, the ICANN Board will consider comments submitted on the
Recommendations contained in the EPDP team's Final Report. In advance of that meeting, I
respectfully request additional information regarding your comments on the basis of the
questions attached in annex. Your clarification on these points, particularly as they relate to
phase two of the EPDP, will help inform the Board deliberations and the community's further
work.

Thank you for your willingness to provide further context with respect to these or any other
points.

Regards,



Göran Marby
President and Chief Executive Officer
Internet Corporation for Assigned Names and Numbers (ICANN)

Annex:

1. Regarding the purposes of processing, the European Commission acknowledged “ICANN’s central role and responsibility for ensuring the security, stability and resilience of the Internet Domain Name System and that in doing so it acts in the public interest.” The Commission noted, however, that ensuring the stability of the Internet Domain Name System “through enabling responses to lawful data disclosures” is not strictly a purpose, but rather a “means” or a “processing activity.” Generally, the Commission said that ICANN’s or the contracted parties’ processing of WHOIS data should not include “enabling responses to lawful data disclosures” as a purpose.
 - We understand that the Commission is not suggesting that ICANN or the contracted parties cannot disclose registration data to third parties.
 - Rather, the Commission is noting that contracted parties do not collect registration data specifically for the purpose of disclosing that data to third parties.
 - ICANN’s purpose for processing registration data is rooted in ensuring the stability, security, and resiliency of the Domain Name System.

Does the above capture accurately the Commission’s comments on this point?

2. The Commission observes that the EPDP’s Final Report relies heavily on legitimate interest, particularly when disclosing personal data to third parties. The Commission observed that, “It may for instance serve ICANN and the contracted parties’ legitimate interest to disclose personal data to third parties, in certain cases and provided certain conditions are met.”

Could you confirm that these comments are not to suggest that reliance on legitimate interest is incorrect when disclosing data to third parties; but rather that ICANN, the contracted parties and the third parties need to rely on the appropriate legal basis depending on the circumstances?

3. The European Commission stated that “[i]n principle, as acknowledged by the EDPB, ICANN and the contracted parties are to be considered joint-controllers.” This comment references a [December 2017 letter from the Article 29 Working Party](#) to ICANN org, which said, “At first glance it would seem that since ICANN and the registries jointly determine the purposes and means of the processing of personal data for the WHOIS directories, ICANN and the registries are joint controllers.”
 - While the Commission’s statement of joint controllership is rather general, we understand that it does not necessarily mean that all gTLD data processing is on the basis of joint controllership, given the Commission’s recommendation on identifying each processing activity, legal basis, and the relationship of the parties relevant to each processing.

Is that correct?