

7 May 2018

Mr Akram Atallah
President, Global Domains Division, ICANN

RE: Reply to ICANN's response to CPH TechOps' updated proposal on GDPR Impact on Domain Name Transfers and Registrant Contact Changes sent on 1 May 2018

Dear Akram,

We appreciate your timely response to our 1 May 2018 follow-up communication. Unfortunately, the alternative proposal put forth by ICANN is not feasible for implementation in advance of 25 May 2018. ICANN's proposal would necessitate complicated and extensive technical changes requiring new data inputs and currently-invalid characters to be included in the authorisation code, extensive changes to registrar interfaces, and across-the-board cooperation by registries to update their authorisation code restrictions. Additionally, the ICANN proposal has problematic implications when considered through a privacy lens: submission of an authorisation code that included personal email addresses would create a new process whereby personal data was transferred. The legitimacy of such process has not been contemplated in General Data Protection Regulation (GDPR)¹ discussion and legal reviews to date. With less than three weeks before the GDPR comes into full effect, adding complexity and new dependencies to the proposed transfer framework without enough lead time would inevitably result in collapse of the transfer process² come 25 May 2018.

The proposal we submitted is both equivalent in function to what ICANN requires and an improvement over what ICANN proposes because it can be implemented by 25 May 2018. In particular, the existing two-factor authorisation via the Form of Authorisation (FOA) on the gaining registrar is a mitigation against a registrant inappropriately losing a domain name. Shifting the two-factor authorisation via the FOA to the incumbent registrar is an equivalent mitigation tactic. An incumbent registrar has the information needed to acquire the FOA, is motivated to acquire the FOA, and can NACK the transfer request if needed. The mitigation method only fails if the authorisation code is compromised, which is true in both scenarios equally. As a further improvement to the transfer process we propose that the gaining

¹ <http://eur-lex.europa.eu/eli/reg/2016/679/oj>

² <https://www.icann.org/resources/pages/transfer-policy-2016-06-01-en>

registrar complete the data accuracy requirements as ordinarily required for all new registrants.

As noted in prior correspondence, we believe that the registrar-proposed solution is an interim one and should generate a discussion about how to improve transfers in the long term. This would provide the appropriate forum to consider mechanisms like that proposed by ICANN, and whether they provide meaningful improvements to security, as well as whether better mechanisms are available.

We also note that ICANN indicates the Contractual Compliance team “needs access to full registration data of specific domain names”. This need should be considered as part of the longer-term conversation on how and to what extent contracted parties can provide access to third party users while remaining legally compliant. To these ends, we would encourage ICANN Compliance to demonstrate a GDPR-compliant legal basis for any access it requires as part of these conversations.

Given the tight timeline and our shared interest in preserving the security and efficiency of transfers after 25 May 2018, the registrars engaged in the CPH TechOps subcommittee note our intention to move forward with implementation of the transfer process as described in our 1 May 2018 correspondence. We hope for ICANN’s cooperation and support in standardising this process to the fullest extent possible by incorporating that proposal into forthcoming temporary policies or guidance related to GDPR implementation.

Yours sincerely

Tobias Sattler
Co-Chair, CPH TechOps
Vice Chair, RrSG

cc:

- Mr John Jeffrey, General Counsel & Secretary, ICANN
- Mr Cyrus Namazi, Vice President DNS & Industry Engagement GDD, ICANN
- Mr Jamie Hedlund, Senior Vice President, Contractual Compliance, ICANN
- Mr Paul Diaz, Chair RySG

- Mr Graeme Bunton, Chair RrSG
- Ms Sue Schuler, RySG Secretariat
- Ms Zoe Bonython, RrSG Secretariat