



27 November 2017

Rafik Dammak
Policy Committee Chair, Non-Commercial Stakeholders Group (NCSG)

Dear Mr. Dammak:

Thank you for your letter of 19 October 2017 which has been posted to the ICANN Correspondence page. We recognize and share your concerns regarding compliance with the European Union's General Data Protection Regulation (GDPR) and other relevant national laws. Our reply herein reflects discussions of these topics at ICANN60 as well as developments related to the GDPR since the meeting.

As noted 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 WHOIS system, and thus the domain name space. The purpose of the current community discussions and legal analysis that we are undertaking is to determine the scope of the impact. As a community, we need to work together to find the right balance between the current WHOIS services and compliance with local laws. To be clear, ICANN will be compliant with the law, whatever the ultimate solution is to our current challenges. To that end, we welcome all stakeholders' contributions to this discussion and value the Non-Commercial Stakeholder Group's (NCSG) unique perspective. As a panelist representing the NCSG at ICANN60's "Cross-community Session: GDPR Implications for ICANN," Stephanie Perrin provided important context in this regard.

Leading into ICANN60, as you may be aware, ICANN org 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 existing requirements for registries and registrars to provide open, publicly available WHOIS services. It also highlights the complexity of these issues in the domain name space, and concludes that the current open, publicly available WHOIS services cannot remain unchanged. ICANN org is working with Hamilton on the next iteration of the legal analysis. We welcome questions for the firm to consider in its assessment. Please send questions to gdpr@icann.org.

Acknowledging this period of uncertainty, on 2 November 2017 ICANN org published a statement indicating that ICANN Contractual Compliance would defer taking action against any registry or registrar for noncompliance with contractual obligations related to the handling of registration data under certain conditions. We encourage you to read the full statement [here](#). 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 related to domain name registration. This would allow for temporary relief from these contractual obligations before the Next Generation gTLD Registration Directory Services Policy Development Process Working Group (RDS PDP WG) delivers a long-term

policy solution balancing these obligations. We encourage you to continue your active participation in the RDS PDP WG.

You also note in your letter a legal analysis from Wilson Sonsini Goodrich & Rosati, which was commissioned by the RDS PDP WG. ICANN org has noted this assessment, which was requested by the RDS PDP WG to inform its work on future registration directory services. We have shared this analysis with the Hamilton firm as a reference document as it continues to produce further legal analyses on this topic.

In parallel, ICANN org continues to engage with stakeholders on the possible implications of the legislation on existing WHOIS policy. We have reached out to the leadership of ICANN's Supporting Organizations (SO) and Advisory Committees (AC) to provide them an opportunity to engage and join in meetings, as well as to provide their 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.

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 and keep it 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