

3 August 2018

Mr Cyrus Namazi  
Vice President, Domain Name Services & Industry Engagement, ICANN GDD

**Re: Domain Name Transfers, as specified in the Temporary Specification**

Dear Mr Namazi,

I am writing on behalf of the Registrar Stakeholder Group in response to correspondence between the RrSG Compliance sub-group co-chair and ICANN Compliance. Prior to ICANN publishing the Temporary Specification, the CPH TechOps group provided guidance on how domain name transfers should proceed in order to be GDPR compliant. However, the language on domain transfers ultimately included in the Temporary Specification presents technical difficulties that the RrSG would prefer to resolve without having to amend the Spec itself.

On 10 July 2018, Greg DiBiase, co-Chair of the RrSG Compliance sub-group, emailed ICANN Compliance with the following request:

“(ICANN Compliance) are asking for the following information when processing a transfer complaint: (a) a copy of the gaining registrar FOA or (b) confirmation that the registrant email was not available when the transfer was initiated.

The Registrar Stakeholder Group has identified two instances in which the registrant email is not available:

- 1) The email address is redacted or obfuscated.
- 2) The email address is not available because the gaining registrar may not have consent to use/process this personal data because it may belong to a subject of European Economic Area.

Please confirm that Compliance understands that either instance would render a registrant email unavailable and allow a gaining registrar to refrain from sending a gaining registrar FOA.”

On 25 July 2018, ICANN Compliance subsequently answered:

“ICANN confirms that this reference is applicable to the scenario you describe in #1 below – when the email address is redacted or obfuscated. It does not apply to the scenario described in item #2 if the email address is not redacted/obfuscated.”

ICANN’s response is problematic for two reasons, the first related to consent and the GDPR, and the second is technical, which I’ll elaborate on below.

**GDPR Concerns**

An email address in a losing registrar's WHOIS may belong to a subject of relevant data privacy constraints (which registrars have no way of knowing) and therefore require consent for processing (which gaining registrars cannot obtain). Furthermore, because transfers can

proceed (as demonstrated for years by several ccTLD registries like SIDN, Denic, and Nominet) without a gaining registrar FOA, employing it may violate the data minimization principles, enshrined in the GDPR, and numerous other data protection regimes.

### **Technical feasibility**

The email in a losing registrar's WHOIS often does not reach the registrant, as Registrars may have taken a webform or alternate approach to satisfy the contactability requirement of the Temporary Specification. For example, the email published may be something like [donotreply@example.com](mailto:donotreply@example.com), or [redactedforprivacy@exampleregistrar.com](mailto:redactedforprivacy@exampleregistrar.com), or alternately a generic email which auto-replies with a link to a webform. Therefore, even if registrars could automate a way to check the existence of an email in the WHOIS (which is unlikely), transfers would still fail because the gaining registrar FOA would not reach the registrant. In short, Registrars have no way of determining if the email published in a losing Registrars' Whois is functional or reaches a registrant directly. Preserving this flexibility in approach to contactability is also important, allowing registrars to innovate while respecting both policy and privacy demands.

Insistence on sending a gaining registrar FOA to an "available" email effectively forces most transfers to fail before they can succeed, which seems contrary to the Transfer Policy's actual intent.

### **CPH TechOps Guidance on Transfers**

Finally, it should be noted that the language on transfers in the Temporary Specification is not what was in the CPH TechOps letters<sup>1</sup>, which provided clear guidance on how transfers should be specified. The RrSG believes that if the original language had been used, it would likely not have caused the current misunderstanding.

If ICANN disagrees with the rationale outlined above, the RrSG would kindly request that ICANN legal review the matter and advise why gaining registrars should be using an email address published in the WHOIS without known consent.

Yours Sincerely,

Graeme Bunton  
RrSG Chair

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<sup>1</sup> <https://www.icann.org/en/system/files/correspondence/sattler-to-atallah-01may18-en.pdf>  
<https://www.icann.org/en/system/files/correspondence/sattler-to-atallah-07may18-en.pdf>