



The Internet Corporation for Assigned Names and Numbers

20 September 2013

Mr. Jacob Kohnstamm
Chairman, Article 29 Data Protection Working Party
European Commission
JUST-ARTICLE29WP-SEC@ec.europa.eu

Subject: Statement on the data protection impact of the revision of the ICANN RAA

Dear Chairman Kohnstamm,

Thank you for your letter of 6 June 2013 regarding ICANN's Registrar Accreditation Agreement (RAA). We appreciate your input, on the provisions of the RAA affecting the processing of personal information.

We also appreciate your observations regarding the need to ensure that any retention of personal data beyond the term of the contract must be proportionate to the legitimate aim pursued

As you may be aware, the ICANN Board approved the 2013 RAA on 27 June 2013. The new 2013 RAA, adopted after a long period of negotiations, includes such improvements as:

- Establishment of a registrar point-of-contact for reporting abuse.
- Verification and validation of WHOIS (domain registrant) data.
- Clear establishment of registrar responsibility for reseller compliance.
- Enhanced compliance tools that include broader suspension and termination tools, clarification of audit rights, access to information to facilitate ongoing investigations and annual certification requirements.

The 2013 RAA, which was supported by the Governmental Advisory Committee (GAC)¹ in its Beijing Communiqué and is based in part on the 2009 GAC Endorsed Law Enforcement Recommendations, also includes additional and changed obligations for retention of data related to domain name registrations. While the 2009 RAA required registrars to keep many

¹ The GAC is the mechanism through which governments of the world provide advice to the ICANN Board on matters of public policy. There are currently over 130 member states or territories of the GAC, including the European Commission as well as many European countries.



points of data for three years past the life of the registration, the 2013 RAA actually reduces this retention requirement and creates a dual-tiered system.

Some items of data are required to be retained for only two years past the life of registration (items 1.1.1 – 1.1.8). For those items of data that are more likely to invoke data privacy concerns (items 1.2.1 – 1.2.3), registrars are only obligated to retain those items for six months after the time of relevant transaction. This two-tiered retention cycle was formulated with Registrars in recognition of some of the data retention and privacy concerns that are raised within your letter. For clarification, the six-month time period is not measured from the end of the registration, but rather from the relevant transaction.²

It is important to note that the nature and genesis of the data retention obligations. The obligation to maintain billing information is a long-standing obligation in the RAA. It serves legitimate purposes beyond those recently identified by the law enforcement community, such as helping registrants resolve problems related to their domain name accounts with Registrars. For example, ICANN has referred to billing information for consumer protection purposes, such as in situations where a registrar has failed to protect the interests of the registrants. Although the law enforcement community representatives requested RAA amendments during the recently concluded negotiations, the 2013 RAA does not create a new mechanism by which law enforcement personnel can access billing information. Instead, law enforcement is still required to follow applicable law and process (such as seeking a subpoena, if appropriate) if it wishes to access this information.

ICANN fully understands the need to respect applicable data protection laws. Even with the careful crafting of retention schedules, both ICANN and the Registrars recognize that the variety of data protection schemes around the world, as well as privacy and data retention laws, may require affording registrars the opportunity to deviate from the standard retention schedule set forth in the RAA. As a result, ICANN has identified the need to revise the ICANN Procedure for Handling Whois Conflicts with Privacy Law (at <http://www.icann.org/en/resources/registrars/whois-privacy-conflicts-procedure-17jan08-en.htm>) to more broadly handle issues including data retention. In addition, the Procedure will have to be modified to allow for ICANN's contracted parties, including Registrars under the 2013 RAA, to invoke the procedure without having proceedings initiated against them.

Until those revisions are made, there is a waiver procedure available through the data protection specification to the 2013 RAA. We understand that your letter is part of an effort to assist Registrars in invoking the interim waiver procedure. ICANN will shortly be releasing

² For example, if a registration was created on 1 June 2013, the means and source of payment information and log files for that 1 June 2013 transaction must only be retained for six months, regardless of the length of the registration.



documentation regarding the specific requirements for invoking the waiver procedure, which will include requirements for identification of the specific laws or regulations upon which the waiver request is based. ICANN will require Registrars to follow the requirements for invocation of the waiver process prior to consideration of any requests. ICANN will consider all relevant documentation, including any further documentation provided by the Article 29 Data Protection Working Party, as part of its evaluation of waiver requests.

Thank you for continuing to engage in the ICANN community dialogue regarding data protection and privacy concerns. We recognize your important role in the European Union.

With such a continued dialogue in mind we suggest that a discussion, on the RAA 2013 and related matters, might be useful. The Article 29 Working Party may be aware that ICANN has initiated work to identify a replacement system to the Whois system, and is therefore interested in dialoguing with interested parties. Nigel Hickson, our European Vice President, based in Brussels, would be more than happy to initiate this discussion. He can be contacted on nigel.hickson@icann.org.

Best regards,

A handwritten signature in blue ink, consisting of several loops and a long trailing line extending to the right.

John O. Jeffrey
General Counsel and Secretary