

**9 August 2018**

Dear Mr. Debeuckelaere,

I write to respond to the questions raised in your 16 July 2018 letter regarding the activities of ICANN's regional office in Brussels, Belgium. I thought it might be helpful to give a brief overview of ICANN and its global operations, as well as the WHOIS system in order to provide context to our specific responses to the questions in your letter.

### About ICANN's Global Operations

As you may know, the Internet is administered by a decentralized collection of organizations and people who set rules, standards, and policies so that the world can be connected on one global, secure and stable Internet. ICANN's role is to coordinate, at a global level, the Internet's system of unique identifiers. Its core mission is the responsibility of ensuring the security and stability of the top-level of the unique identifiers used on the Internet, specifically, domain names, Internet Protocol addresses, and other technical parameters used to make the Internet work and that help facilitate a global Internet.

ICANN is a non-governmental non-profit organization and has five regional offices: Los Angeles (headquarters), Brussels, Istanbul, Montevideo, and Singapore. We have engagement centers in Washington, D.C.; Geneva; Beijing; and Nairobi. We also have strategic partnerships in Asunción, Cairo, and Seoul that help us reach more stakeholders around the world.

ICANN is made up of a number of different groups (or "stakeholders"), each of which represent a different interest on the Internet and all of which contribute to any final decisions that ICANN makes. To develop global policy for the Domain Name System (DNS), ICANN utilizes a framework that we describe as the "bottom-up, consensus-driven, multi-stakeholder model". Rather than ICANN's Board of Directors solely declaring what topics ICANN will address, members of sub-groups in ICANN can raise issues at the grassroots level. If the issue is worth addressing and falls within ICANN's remit, it can rise through various Advisory Committees and Supporting Organizations until eventually policy recommendations reach consensus and are passed to the Board for a vote. ICANN's final decisions are made by a Board of Directors, which is made up of 20 members from all around world.

In summary, ICANN can be viewed as an ecosystem made up of three components: the ICANN community, the ICANN Board of Directors, and the ICANN organization.

- The ICANN community works together to give advice, make policy recommendations, conduct reviews and propose implementation solutions for common problems within ICANN's mission and scope.
- The ICANN Board provides strategic oversight for the ICANN organization, ensuring the organization acts within its mission and operates effectively, efficiently and ethically, and considers community-developed policy recommendations.

- The ICANN organization implements the community’s recommendations at the direction of the Board, under the supervision of the CEO, within ICANN’s mission and scope.

### Background About WHOIS

As part of our responsibilities, and through contracts with its registries and registrars, ICANN coordinates WHOIS, which is a global, publicly available distributed directory service containing information about the registration records of more than 187 million domain names. There is not a centralized WHOIS database managed by a single entity in one location. Rather, ICANN helps to coordinate a decentralized WHOIS through private contractual arrangements, with more than 2,500 domain name registries and registrars located throughout the world, each of which, along with ICANN, are data controllers impacted by the GDPR.

### Response to Question 1:

The summary provided in the introduction of your letter accurately reflects the activities and the mission of the Brussels regional office of ICANN organization. We have not located any other Board decisions regarding the activities and/or mission of the Brussels regional office that substantially changes the summary provided. ICANN organization’s international office strategy is reflected in a 2017 Blog from ICANN’s CEO, which is available here:

<https://www.icann.org/news/blog/our-international-office-strategy>.

### Response to Question 2:

The Brussels regional office is not solely responsible for management decisions regarding the WHOIS system, it does, however, participate in those decisions. This is part of its mission.

Generally, it is important to acknowledge that decisions regarding the WHOIS system are not management decisions made by the ICANN Board or ICANN organization following a top-down approach. Rather those decisions emerge from a bottom-up, open and transparent discussion process involving a global community comprising of various stakeholders as further described below.

ICANN coordinates the Internet’s unique identifiers – domain names and IP addresses – across the world and defines policies for how these identifiers should run. ICANN achieves its mission through implementation of policies approved by its Board of Directors. These policies start out as recommendations formed and refined by the global ICANN community through its Supporting Organizations (SOs) and influenced by Advisory Committees (ACs).

The SOs and ACs are comprised of volunteers from over 130 countries and territories. In a bottom-up, open and transparent process, members of any SO and AC as well as the ICANN Board may raise an issue they believe requires policy development. The relevant Supporting Organization considers decisions or recommendations by working groups before forwarding them to the ICANN Board of Directors. The Board has ultimate authority to approve or reject policy recommendations.

Volunteer policy development working groups form around an issue and consider it from all angles, making decisions by consensus wherever possible. Many of these working groups are open to everyone in ICANN's volunteer community. Typically, working group discussions are recorded and transcribed so that the public has full access to discussions and debates.

Written public comments are sought at several stages in the policy development process. The opportunity to comment is intended to provide interested community members with a means to share their views on policy proposals, and to ensure that policy recommendations reflect the concerns and perspectives of the broader Internet community.

Policies for generic top-level domains (gTLDs) are developed within the Generic Names Supporting Organization's (GNSO) Policy Development Processes (PDPs). A general outline of the GNSO Policy Develop Process is available here: <https://gns0.icann.org/en/basics/consensus-policy/pdp>.

Once the gTLD policy recommendations emerging from these PDPs are approved by the ICANN Board, ICANN's Global Domains Division implements them. If the policy receives consensus support from the GNSO Council and is approved by the ICANN Board, gTLD registries and registrars are contractually obligated to implement such policies.

#### Response to Question 3:

The Temporary Specification has been adopted under the procedure for Temporary Policies outlined in the Registry Agreement and Registrar Accreditation Agreement. Fifteen Board members voted to approve its adoption, representing a unanimous approval among Board members present and meeting the contractual requirement for the Board passing a temporary specification. The Board must reaffirm its temporary adoption every 90 days, and may continue to do so for no more than one year.<sup>1</sup>

While strictly legally the involvement or approval by the Brussels regional office is not required, the office factually plays an important role in the discussion process outlined for the adoption of policy measures in the response to Question 2 above, including the Temporary Specification. The Brussels regional office is a contact point for European community stakeholders such as registries and registrars as well as European and Member State institutions. It has an important, facilitating role in ensuring that European interests are taken into account in the adoption process for policy measures.

#### Response to Question 4:

As required by ICANN's Bylaws, in order to ensure broad international representation on the ICANN Board, members of the Board are located in various regions throughout the world. Board members do not have offices at ICANN's regional offices. Instead, Board meetings are held remotely and at ICANN's public meetings. Given the bottom-up, open and transparent discussion process in which policy decisions emerge concerning the WHOIS system (please see description

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<sup>1</sup> <https://www.icann.org/news/announcement-2018-05-17-en>

in answer to Question 2 above), there are not any directors to whom “overall management responsibility” for ICANN’s policies concerning WHOIS can be attributed.

Generally, members of the ICANN Board of Directors are selected by the relevant stakeholder groups and serve on a number of Board committees. Currently, these committees are: Accountability Mechanisms, Audit, Board Governance, Compensation, Executive, Finance, Risk, Organizational Effectiveness and Technical.<sup>2</sup> Notably there is no committee dedicated to the WHOIS system, rather there is Board working group that helps to oversee the implementation of WHOIS-related policies and projects developed by the community.

It is worth noting that the ICANN Board of Directors is distinct from ICANN’s executive management team. The ICANN Bylaws establishes that with certain exceptions, the powers of ICANN shall be exercised by, and its property controlled, and its business and affairs conducted by or under the direction of, the Board. In turn, the ICANN CEO is authorized to act within the authority delegated by the Board, and the CEO may designate key management to assist in carrying out these responsibilities. To provide greater clarity of roles between the Board and the CEO/Management, the Board adopted a set of guidelines<sup>3</sup> to identify the respective key roles and interdependencies of these relationships.

#### Response to Question 5:

We refer to the description of the discussion process in which policy decisions emerge concerning the WHOIS system (please see answer to Question 2 above). It can only be emphasized again that this community-driven decision-making process is not and cannot be related to a certain regional office of ICANN.

Nevertheless, the Brussels regional office is certainly best placed to function as the European contact point for the ICANN community as well as European and Member State institutions (as described in the answer to Question 3 above) and will therefore continue to play an important role with regard to addressing issues relating to the GDPR compliance of the WHOIS system.

#### Response to Question 6:

The responsibility for the daily management of ICANN’s regional office in Brussels lies with its branch manager and representative Jean-Jacques Sahel.<sup>4</sup> He is responsible for the office’s strategic plan, operating costs, and staff assigned to the Brussels location.<sup>5</sup>

While certain decisions of overall importance are made by the ICANN Board of Directors, there is not one particular director who can be regarded as directly involved in the administration of the Brussels regional office.

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<sup>2</sup> <https://www.icann.org/resources/pages/board-of-directors>

<sup>3</sup> <https://www.icann.org/en/system/files/files/delegation-of-authority-guidelines-08nov16-en.pdf>

<sup>4</sup> <https://www.icann.org/resources/board-material/resolutions-2017-06-24-en#1.h>

<sup>5</sup> <https://www.icann.org/news/blog/our-international-office-strategy>

Response to Question 7:

As previously stated in our response to Question 5, the community-driven decision making process, which applies with regard to relevant policy based processing decisions as well, is not and cannot be related to a certain regional office of ICANN. The ultimate authority to approve or reject policy recommendations lies with the ICANN Board of Directors.

Specifically, with regard to WHOIS processing, as described in the response to Question 2 that the policies for generic top-level domains (gTLDs) are developed within the Generic Names Supporting Organization's (GNSO) Policy Development Processes (PDPs). Any policy recommendations from the PDP approved by a supermajority vote of the GNSO Council must be adopted by the Board unless the Board determines (by a supermajority vote and by providing a detailed rationale) that the policy is not in the best interests of the ICANN community or ICANN. Once the policy recommendations emerging from these PDPs are approved by the ICANN Board, ICANN's Global Domains Division (GDD) implements them. If the policy receives consensus support from the GNSO and is approved by the ICANN Board, gTLD registries and registrars are contractually obligated to implement such policies.

Response to Question 8:

The delegated responsibilities of the Brussels regional office include the responsibility for the processing of personal data of its staff and the contact persons with whom the office is interacting. Please refer to a Blog from ICANN's CEO for additional information about the responsibilities of regional offices: <https://www.icann.org/news/blog/why-i-love-the-international-office-strategy>.

I trust that you will find this information to be helpful. Please let me know if you would like to discuss any of these matters further.

Best wishes,



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