



12 April 2018

RE: WP29 Plenary Update

Andrea Jelinek
Chairperson, Article 29 Data Protection Working Party

Dear Chairperson Jelinek

I would like to express my sincere appreciation for the [recommendations](#) provided by the Article 29 Working Party on the collection, retention and publication of domain name registration data and the WHOIS system. We look forward to continuing to work with you and the multistakeholder community to answer the questions you have raised. We also thank you for the offer of your colleagues in the WP29 Technology Subgroup to meet on 23 April in Brussels.

ICANN recognizes the importance of the GDPR and its goal of protecting personal data, we also recognize the importance of balancing the right to privacy with the need for information. With that in mind, we must again stress the need for a moratorium on enforcement in order for us to act to protect Internet users globally. The lack of a reference to our request for a moratorium on enforcement is also of grave concern to the ICANN organization and the nearly 2,500 contracted parties who must make changes in the decentralized WHOIS database system to comply with the new regulation.

We remain very concerned that even if we are able to include all of your recommendations in our proposed model, the amount of time needed to implement this new model is significant. In your letter, you have not made any indication as to whether we will be given a sufficient amount of time to roll out the model to all of the various 2,500 data controllers across the WHOIS system.

As ICANN is performing the role of coordinator of the decentralized databases that make up WHOIS, we request that you include ICANN in any proceedings relating to WHOIS, and ask that it be included in all discussions and actions of the privacy regulators with the other WHOIS data controllers. We are studying all available remedies, in order to seek clarity in our ability to continue to properly coordinate this important global information resource without fragmentation.

We are also concerned that we may not have been clear enough in setting out the likely negative consequences that parts of the community have noted if WHOIS is fragmented. For example, a fragmented WHOIS will hinder the ability of law enforcement around the world to get important information and for the anti-spam community to help ensure the Internet protects end-users. It will also:

- ⦿ Protect the identity of criminals who may register hundreds of domain names specifically for use in cyberattacks;
- ⦿ Hamper the ability of consumer protection agencies who track the traffic patterns of illicit businesses;

- ⦿ Stymie trademark holders from protecting intellectual property; and
- ⦿ Make it significantly harder to identify fake news and impact the ability to take action against bad actors.

We strongly believe that if WHOIS is fragmented, it will have a detrimental impact on the entire Internet. A key function of WHOIS allows those participating in the domain name system and in other aspects of work on the Internet to know who else is working within that system. Those working on the Internet require the information contained within WHOIS to be able to communicate with others working within that system.

It is for these reasons and countless others that we believe it is essential for the Article 29 Working Party to spend more time considering the balance between the important right to privacy and the need for information. As you know, ICANN has received input from governments, including the European Commission¹ and ICANN's Governmental Advisory Committee², regarding WHOIS. Additionally, our community has been actively involved in these discussions. Please see our Data Protection/Privacy Issues [page](#) for more on the feedback we've received.

ICANN is working to balance the inputs it has received from governments to understand how to comply with the law. We look forward to continuing this dialogue with you on 23 April.

Sincerely,



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

¹ <https://www.icann.org/en/system/files/correspondence/avramopoulos-et-al-to-marby-29jan18-en.pdf>

² <https://gac.icann.org/contentMigrated/icann61-gac-communique> and
<https://www.icann.org/en/system/files/files/gdpr-comments-gac-icann-proposed-compliance-models-08mar18-en.pdf>