



To: ICANN Compliance  
12025 Waterfront Drive, Suite 300  
Los Angeles, CA 90094-2536, USA

Attn: Maguy Serad

Thank you for your July 6, 2018 reply regarding ICANN's review of the documentation provided by AppDetex in our email concerning registrar non-compliance issues.

At this point, we do not believe that effective processes and measures have been developed to ensure that registrars will address the complaints herein. Please understand, however, that we do plan to file complaints in the future, but not until ICANN has (i) established proper disclosure guidelines for non-public WHOIS requests for the registrar base to follow, and (ii) implemented an enforcement process that will ensure that brand holder requests are being satisfied.

We believe that an effective enforcement process would include the following:

- comprehensive review of the complaint,
- confirmation of lack of availability of the nonpublic data via Port 43 or Registrar's website without any unique authorization or whitelisting,
- request adheres to the language requiring access in the Temp Spec,
- reasonable timeline for action and resolution by ICANN compliance, especially for alleged abusive domain names,
- reasonable timeline for action and resolution by registrar especially for alleged abusive domain names, and,
- tracking and metrics of compliance by specific registrar of the requirement to provide access to nonpublic data,

We will continue to identify and share requests for WHOIS data which receive non-responsive replies from registrars. We hope that, by providing such information concerning legitimate WHOIS data requests, a more consistent, efficient and workable approach will be developed for the disclosure of the non-public WHOIS information so that brand holders may obtain the information needed for their

legitimate purposes. Please let us know when a detailed compliance system is available for the Temp Spec, including what is expected of the registrars and the submitters with regard to requests for public and non-public WHOIS data, and we will begin submitting formal complaints, if appropriate, at that time.

We also want to give you some background information related to our originating email, as it may have been unexpected. AppDetex is just beginning the roll out of a process to enable brand holders to obtain necessary non-public WHOIS data for protection of their intellectual property (“IP”). In full compliance with the Temp Spec, we are developing templates and processes to facilitate ready access to that non-public information for our customers, including Facebook, Inc. Many of our customers have expressed interest in utilizing such a system to protect their IP, but are so far only observing how registrars are addressing their responses to requests under the Temp Spec. Already we have seen increases in the quantity of requests that are being transmitted to registrars pursuant to the Temp Spec and GDPR requirements. We believe that the number will grow significantly as the process is refined and streamlined. As a result, we hope that this information will be useful to ICANN’s Contractual Compliance Department as it develops its own procedures for addressing new issues arising out of the Temp Spec that can scale to the level of requests that will be coming.

In response to your requests for further clarification, we again draw your attention to the facts presented in our email that “AppDetex is authorized, on behalf of Facebook, to send domain name WHOIS data reveal requests to ICANN-accredited registrars for GDPR-allowed purposes, including domains that are infringing on the IP rights/trademarks of Facebook and domains that are abusive (i.e. phishing, malware) and infringe on Facebook’s trademarks.”

We acknowledge, as stated in your reply, that certain of the identified registrars provided public WHOIS data, which may be available either through the registrar’s Port 43 and/or web-based WHOIS services. However, as made clear in our email to you, we were seeking the non-public WHOIS information necessary to enforce upon domain names to end the infringing or abuse practices. The non-public data was not available at the time of the request.

We ask that you please explain your current process for looking up WHOIS records. AppDetex as a registrar is not whitelisted with the multitude of registrars providing lookups on Port 43, and found the process for looking up non-public records through web-based lookups lengthy and confusing. We used a variety of sources but were unable to find the basic non-public data necessary for enforcement actions in some cases. As a result, it is possible, ICANN may have unique access to data the public does not. We also found the GDPR redacted records confusing as there is not any standardization in the language used to indicate a redacted record. For example, it was difficult to distinguish between a GDPR redacted record and proxy/privacy record.

We appreciate that for ICANN, WHOIS data appears to be available, either through the registrar's Port 43 and/or web-based WHOIS services. However, that availability may result from ICANN's IP addresses being whitelisted by some or all registrars. But such whitelisting for ICANN does not necessarily mean that registrars have made that WHOIS data available to third parties, like AppDetex, seeking to obtain the data under the Temp Spec.

Regarding further requested information, please see below as to each of your four categories quoted in full and our response:

**"1. Copies of any and all communications you have had with the registrar(s) regarding this matter (including your requests for non-public data, any subsequent communications and header information)"**

All copies of communications with the registrars related to the requests for WHOIS data are being separately provided because there were more than five hundred (500) initial written communications and follow-up communications.

Please be advised that we are attaching (Exhibit A) a template with our communication that is representative of the requests for WHOIS data provided to the identified registrars. Each of those requests identified: (a) AppDetex as the authorized representative of Facebook, Inc. for obtaining non-public WHOIS data; and (b) the legitimate interests of Facebook, Inc. in requiring the non-public data. We also received responses from eight (8) of the registrars which responses are attached to this letter as (Exhibit B).<sup>1</sup> As you will note from these responses, there is no real consistency in approach or disclosure.

**"2. Confirmation that the requests for non-public data provided in item #1 above contain explanation of the legitimate interest(s) which serve as the basis for requesting the data"**

We confirm that each of five hundred (500) plus requests for non-public WHOIS data to the registrars (as referenced in Exhibit C) contained written representations to each registrar that: (a) AppDetex was the authorized representative and agent for Facebook, Inc. for purposes of the non-public WHOIS data reveal requests; (b) that the information was required from each registrar because the identified domains were either infringing on the IP rights/trademarks of Facebook and/or the domains were abusive (i.e. phishing, malware) concerning Facebook's rights in its IP or that of its Internet platforms. Exhibit A is a copy of one such initial communication that was utilized in every request demonstrating that the aforementioned information was provided in each request.

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<sup>1</sup> In many cases, responses arrived days or even weeks after the initial requests were made.

### **“3. Any other records or information relevant to your complaint”**

Please see attached (Exhibit C) which contains a revised spreadsheet (reflecting information obtained after our email to ICANN compliance) showing the following categories: the domain name, the name of the registrar, the IANA number, the legitimate interest implicated, the lack of response, and, in seven (7) instances, the non responsive replies of the registrars (received after our email to ICANN compliance) that failed to provide the non-public WHOIS information.

Attached (Exhibit B) contains the responses received from eight (8) registrar communications that provided some response (received after our email to ICANN compliance).<sup>2</sup> Except as footnoted below, each of those registrar communications are non-responsive and consist of one or more of the following replies: complainant (Facebook) must utilize legal process of a subpoena or court order; complainant must file a UDRP action; complainant must file an action with WIPO; complainant must contact WIPO; and/or complainant's request has been forwarded to the domain owner.

### **“4. Your permission for ICANN to forward your complaint and any attachment you may provide in your response(s) to the registrar of record and any other party with whom ICANN may consult to address your complaint”**

At this point, Facebook, Inc. is providing ICANN with this information to inform ICANN's compliance processes, rather than serving as an official complaint against the registrars specified in the attached materials. As a result, it is not authorizing the forwarding of any complaint, attachments, requests or other documentation to the registrars of record.

Please note that per your request, we are sending the information and records requested above via reply email attachments (no more than 4 MB total) and we have not changed the email subject heading. The attachments are provided in .TXT, .PDF, or .DOC(X) format. As noted above, the more than 500 initial requests, as identified in our originating email to you, are being separately forwarded.

To the extent, you would like to discuss anything contained herein, please contact me (Ben Milam) directly at Contact information Redacted

Sincerely,

AppDetex Legal Services

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<sup>2</sup> It should be noted that one registrar FBS, Inc. provided the full WHOIS information for three of our requests.