

## FAQ on ICANN Organization's Chief Data Protection Officer Role

On 28 July 2017 ICANN organization announced the appointment of its first Chief Data Protection Officer (CDPO), including a description of the role (<https://www.icann.org/news/blog/introducing-icann-s-chief-data-protection-officer-cdpo>). Following the introduction of the CDPO role, questions have arisen in the Community how the ICANN organization CDPO is to be distinguished from the role of a data protection officer (DPO) foreseen in Articles 37 to 39 of the European Union's General Data Protection Regulation (GDPR). This FAQ serves the purpose of clarifying this.

### 1. What are the requirements for mandatory DPO designation under the GDPR, and do they apply to ICANN?

Art. 37 (1) GDPR requires organizations to appoint a DPO under three circumstances, none of which apply to ICANN:

- A **public** authority or body within the scope of applicability of the GDPR. **ICANN is not.**
- An organization that processes as a core activity large amounts of special categories of personal data defined under Art. 9 GDPR, like data relating race, political opinions, religious beliefs, trade union membership, genetic data, biometric data, health data, and personal data related to criminal convictions and offences referred to in Art. 10 GDPR. **ICANN does not.**
- An organization that undertakes large scale, regular, and systematic monitoring of data subjects as a core activity, such as behavioral tracking. **ICANN does not.** (See also Recital 24 of the GDPR which explains in this regard: *"In order to determine whether a processing activity can be considered to monitor the behavior of data subjects, it should be ascertained whether natural persons are tracked on the internet including potential subsequent use of personal data processing techniques which consist of profiling a natural person, particularly in order to take decisions concerning her or him or for analyzing or predicting her or his personal preferences, behaviors and attitudes."*)

ICANN is not engaged in the above activities, and does not require the contracting parties to engage in these activities. Thus, it is not legally required to designate a DPO under the GDPR.

### 2. Has ICANN voluntarily appointed a DPO?

Under the GDPR an organization may also designate a DPO on a voluntary basis. In this case *"the same requirements under Articles 37 to 39 GDPR will apply to his or her designation, position and tasks as if the designation had been mandatory"*. See Article 29 Working Party Guidelines on DPOs, p. 5.

ICANN organization has not decided to voluntarily designate a DPO under European law. Rather ICANN made use of the possibility to voluntarily appoint someone responsible for data protection compliance, who does **not** take on a role of a DPO as such role is defined in the GDPR.

The Art. 29 WP Guidelines on DPOs explicitly mention this option on p. 5: *“This does not prevent an organization, which does not wish to designate a DPO on a voluntary basis and is not legally required to designate a DPO, to nevertheless employ staff or outside consultants with tasks relating to the protection of personal data.”*

### **3. If ICANN’s CDPO is neither a mandatory nor a voluntary DPO under European law, what are the specifics of his role?**

ICANN organization’s designation of a Chief Data Protection Officer is akin to a “data privacy officer”, recognizing that outside the U.S., the term data protection is more widely use than “data privacy.”

This role is not the same as the role of a DPO as defined under the GDPR. ICANN organization’s CDPO is nevertheless responsible for reviewing ICANN internal policies, data processing activities, and procedures for compliance with the GDPR and other data privacy laws applicable to ICANN. For this reason, ICANN organization’s CDPO reports to ICANN’s General Counsel and Secretary. The role is not intended to cover the use of data by Registrars and Registries under ICANN’s contracts, which is part of the broader ICANN community discussion relating to the GDPR and its impact on ICANN contracts. See the announcement of the CDPO role at <https://www.icann.org/news/blog/introducing-icann-s-chief-data-protection-officer-cdpo>.

In order to avoid that there is any confusion regarding title, status, position and task, the ICANN organization CDPO role has **not** been communicated as a **DPO under European law**, but rather as a **global role** to ensure that ICANN organization adheres to data protection and privacy laws that impact the ICANN organization’s activities around the world.

### **4. Will ICANN consider to appoint a DPO (as foreseen in the GDPR) in the future?**

ICANN organization will continue to monitor how the DPO role and requirements evolve under the GDPR, in order to determine if a DPO should be designated under the GDPR at a later time in connection with ICANN’s activities.