

DATA PROTECTION/PRIVACY FAQs

1. Why has ICANN asked for a “moratorium” from the DPAs?

A moratorium on enforcement action by DPAs would potentially allow for the introduction of an agreed accreditation model and for the registries and registrars to implement the accreditation model in conjunction with the measures in the agreed final interim compliance model. Otherwise, the WHOIS system could be fragmented until the interim compliance model and the accreditation model are implemented.

2. What does it mean for WHOIS to “be fragmented”?

A “fragmented” WHOIS would no longer employ a common framework for generic top-level domain (gTLD) registration directory services. Registries and registrars would implement varying levels of access to data depending on their interpretations of the law. For example, some may only display “Thin” registration/WHOIS data so that no personal data is shown.

3. What happens if ICANN working in consultation with the GAC, DPAs and contracted parties are unable to develop an accreditation procedure ahead of the GDPR enforcement deadline?

In its [Proposed Interim Model](#) (section 5.6), ICANN org has proposed an approach to accrediting users with legitimate purposes to gain access to full Thick registration/WHOIS data. We welcome community discussions surrounding this proposed model. ICANN org has [offered secretariat support](#) to one such effort and urged participation from representatives from across the community to participate.

4. Will ICANN tell a contracted party if their proposed model is sufficiently compliant with the GDPR and ICANN's contracts?

ICANN has published a [Proposed Interim Model](#) for compliance with the GDPR, but it is not yet final. We continue to collect input from relevant stakeholders. It is important to remember that in the end, it is in the hands of the DPAs. They decide if the model is compliant. ICANN org has in its documentation been open about the different views within ICANN. ICANN org has also actively proposed for the different contracted parties to contact the DPAs directly. Once we have received and weighed all feedback, ICANN org will inform contracted parties of the final interim model, which may potentially be adopted using the procedures in the Registry Agreement and the Registrar Accreditation Agreement for a Temporary Policy or Specification.

5. What would happen if a contracted party decided not to implement the interim model?

If adopted as a Temporary Policy or Specification, the interim model will carry the same weight as any other contractual obligations in the Registry Agreement or the Registrar Accreditation Agreement. ICANN will enforce against deviations from the model in the same way it enforces against deviations from other contractual provisions. If the WHOIS goes dark, and the model does not support that, ICANN will take enforcement action against the contracted party to ensure they come into compliance. This includes public breach notices and possible termination.

6. Why is ICANN proposing a model that includes legal persons and may be applied beyond the European Economic Area (EEA), seemingly over applying the law?

The [Proposed Interim Model](#) identifies these issues as areas where there are competing view points in the community on the requirements of GDPR where additional guidance from the DPAs is needed. As described in section 5.4 of the Proposed Interim Model, while the GDPR does not protect data pertaining to legal persons, the registrations of legal persons may include personal data of natural persons. Also, it may be difficult in practice to check tens of millions of existing registration records and distinguish between registrations of legal and natural persons.

In addition, the model provides the option to apply the model beyond the EEA, where it is required. This option recognizes that there are data protection regulations similar to the GDPR in other jurisdictions and commentators have suggested that registries and registrars may need the flexibility to apply the changes more globally. Also, it could potentially put registries and registrars not established in the EEA at a competitive disadvantage if contracted parties do not have the option to apply the model on a global basis. It may also be difficult in practice only to apply the changes to collection and processing linked to the EEA depending upon how an individual registry or registrar has set up its systems.

7. Is ICANN a data controller?

As noted in section 7.2.11 of the Proposed Interim Model, each contracting party is acting as an independent controller in connection with the processing of WHOIS data. The contractual commitments contemplated above will address ICANN's and each contracting party's obligations as controllers and impose reasonable cooperation obligations to enable the exercise by data subjects of their data protection rights as set forth in the GDPR. Also, these contractual commitments will require the contracting parties to acknowledge and agree that each is acting independently as a data controller with respect of WHOIS data processed by the party and the parties are not joint controllers as defined in the GDPR.