

## **.EU ccTLD Registry Agreement**

This ccTLD Registry Agreement ("Agreement") is effective as of 13 October 2022 by and between the Internet Corporation for Assigned Names and Numbers, a California, USA non-profit public benefit corporation ("ICANN"), and EURid vzw, a not-for-profit association created under the laws of Belgium ("EURid").

### **1. Recitals**

- 1.1 ICANN is a California, USA non-profit public benefit corporation dedicated to keeping the Internet secure, stable and interoperable, promoting competition and developing policy on the Internet's unique identifiers.
- 1.2 EURid is a Belgian not-for-profit association with registration number 0864240405 and having its registered office at Telecomlaan 9, box 7, B-1831 Diegem, Belgium formed on 8 April 2003 with the intention of managing the .EU top-level domain ("TLD") in the public interest.
- 1.3 Following the Call for the Selection of the Registry of the .EU top-level domain name published on the Official Journal of the European Union on 5 March 2021, the European Commission appointed EURid as the .EU top-level domain Registry by means of the Commission Implementing Decision 2021/1878 on the designation of the .eu top-level domain Registry as published in the Official Journal of the European Union on 26 October 2021. On 3 May 2022 the European Commission and EURid signed the Service Concession Contract for the management and administration of the Delegated ccTLDs which replaces the 2014 service concession contract and which becomes effective as of 13 October 2022 (the "Service Concession Contract").
- 1.4 EURid and ICANN recognise the authority of the European Commission, on behalf of the European Union, to assume responsibility for overseeing the interest of the European Union and its Internet community in management and administration of the .EU top-level domain, with ICANN continuing its role of preserving the technical stability and operation of the DNS and Internet in the interest of the global Internet community.
- 1.5 To implement an allocation of the respective responsibilities of the European Commission and ICANN with respect to the .EU top-level domain on that basis, and in view of the communications described herein above, EURid and ICANN now enter into this Agreement to formally reflect their commitments to one another.

### **2. Definitions**

- 2.1 The "Authoritative-Root Database" refers to the database described in Section 3.2.
- 2.2 The "Authoritative Root-Server System" means the constellation of DNS root nameservers specified, from time to time, in the file <https://www.internic.net/domain/named.root>.
- 2.3 Unless otherwise specified, "days" refers to calendar (rather than business) days.
- 2.4 The "Delegated ccTLDs" means the .EU top-level domain of the Internet domain name system in the Latin script and the approved internationalized domain name

(IDN) top-level domains in the Cyrillic script (.eю with corresponding A-label: xn--e1a4c) and in the Greek script (.eυ with corresponding A-label: xn--qxa6a).

- 2.5 "DNS" refers to the Internet domain name system.
- 2.6 "Governmental Authority" means the European Union, represented by the European Commission, represented by the Director General of the Communications Networks, Content and Technology Directorate General of the European Commission.
- 2.7 The "Governmental Communication" means the laws and regulations – including the jurisdiction of the country where the Registry is based as stated in the Service Concession Contract between EURid and the European Commission, agreements, documents, contracts, memoranda of understanding, and other written instruments regulating the relationship between the Registry and the Governmental Authority. The Governmental Communication at the commencement of this Agreement is described in various parts of Section 1 above.
- 2.8 The "Regulation" means Regulation 2019/517 and any and all subsequent Regulations, Implementing and Delegated Acts relating to the Delegated ccTLDs or Registry.
- 2.9 The "Registry" refers to EURid, a not-for-profit association created under the laws of Belgium, a party to this Agreement, or its assignee.
- 2.10 The "Term of this Agreement" begins on 13 October 2022 and extends until this Agreement is terminated.
- 2.11 The "Service Concession Contract" is defined in Section 1.3.

### **3. ICANN Obligations**

- 3.1 Recognition of the Registry. ICANN hereby recognizes the Registry as the manager of the Delegated ccTLDs during the Term of this Agreement.
- 3.2 Authoritative-Root Database. ICANN shall maintain, or cause to be maintained, a stable, secure, and authoritative database (referred to in this Agreement as the "Authoritative-Root Database") of relevant information about TLDs maintained in the Authoritative Root-Server System. For the Delegated ccTLDs, the Authoritative-Root Database shall contain information about at least the Registry, the administrative contact, the technical contact, and the nameservers. All root zone related questions, instructions, process descriptions, procedures and guidelines, (including, for example, forms for root zone change requests, etc.) may be found at <https://www.iana.org/domains/root> (or any successor page(s) providing the same and/or related information).
- 3.3 Publication of Root-Zone Whois Information. ICANN shall publish, or cause to be published, data maintained in the Authoritative-Root Database about the Delegated ccTLDs. The published data shall include at least the names of the Registry, the administrative contact, and the technical contact. The specification of the data elements published, the means of publication, the update frequency of the publication and the procedure for updating Root-Zone WHOIS data is available and

further detailed at [www.iana.org/root-whois](http://www.iana.org/root-whois) (or any successor page(s) providing the same and related information). EURid declares to have lawful grounds for the export of personal data of the natural persons whose names are to be published, or caused to be published, by ICANN outside the European Union under the applicable data protection laws of the governmental authority where the registry is located.

- 3.4 Notification of Changes to ICANN's Contact Information. ICANN shall, to the extent within its control, notify the Registry of any changes to ICANN's contact information no later than seven days after the change becomes effective.

#### **4. The Registry Obligations**

- 4.1 Provision of Nameservers for the Delegated ccTLDs. The Registry shall use best commercial efforts to cause the authoritative primary and secondary nameservers for the Delegated ccTLDs to be operated and maintained in a stable and secure manner, adequate to resolve names within the Delegated ccTLDs, and any sub-domains over which the Registry retains administrative authority, for users throughout the Internet.
- 4.2 Delegated ccTLDs Registry Data Escrow. The Registry shall ensure the safety and integrity of the registry database, including the establishment of a data escrow policy for the registry data managed by the Registry, as provided for in the Governmental Communication.
- 4.3 Accuracy and Completeness of Contact Information. To the extent within its control, the Registry shall notify ICANN of any change to the contact information about the Delegated ccTLDs in the Authoritative-Root Database no later than seven days after the change becomes effective. The administrative contact for the Delegated ccTLDs must reside in the territory of the Governmental Authority during the entire period he or she is designated as such. The format of the notice shall comply with requirements established from time to time by ICANN. Changes to any the format requirements may be made by ICANN upon thirty days written notice to the Registry.
- 4.4 Conformity to ICANN Policies. The Registry shall abide by ICANN policies developed in accordance with Section 5 that concern the interoperability of the Delegated ccTLDs with other parts of the DNS and Internet; technical operational capabilities and technical performance of a ccTLD operator. To the extent these policies conflict with any national and/or international regulations to which the Registry might be subject and/or any contractual obligation of the Registry towards the Governmental Authority, ICANN and the Registry shall cooperate to resolve the matter such as to avoid and/or mitigate security, stability and interoperability issues to the DNS and Internet.
- 4.5 Financial Contributions to ICANN. On a yearly basis the Registry will inform ICANN about the amount of the voluntary contribution that the Registry intends to provide in support of the ccTLD program and ICANN and its activities and services, which shall take into consideration the guidelines determined by the ccNSO constituency to this respect, as currently published at <https://ccnso.icann.org/workinggroups/council-decision-cctld-contributions-20nov13-en.pdf> (or any successor guidelines published by the ccNSO). The

Registry may elect to provide ICANN a separate voluntary contribution for each of the Delegated ccTLDs, or to otherwise designate to ICANN which portion of a voluntary contribution shall be attributed to each of the Delegated ccTLDs and shall inform ICANN of such separate voluntary contribution or designation on a yearly basis.

- 4.6 Risk Mitigation Plan. The Registry commits to the mitigation of risk due to string similarity set forth in the Risk Mitigation Plan at <https://www.icann.org/en/system/files/files/eurid-risk-mitigation-plan-03apr19-en.pdf> (or any successor page(s) providing the same and/or related information) (the “Risk Mitigation Plan”) that the Registry committed to as a condition for the delegation of the internationalized domain name top-level domain in the Greek script (.eu with corresponding A-label: xn--qxa6a). The Registry commits to adhere to all principles as identified therein.

## 5. Establishment of Specifications and Policies

- 5.1 Procedure for Establishment. The specifications and policies set forth in **Attachment A** shall apply to the operation of the Delegated ccTLDs during the Term of this Agreement. During the Term of this Agreement, new or revised ICANN specifications and policies applicable to the Registry shall be established according to procedures that comply with ICANN's bylaws and articles of incorporation. In addition, new or revised ICANN specifications and policies established during the Term of this Agreement that are required by this Agreement to be established in the manner specified in this Section 5 shall be developed according to procedures that provide the Registry with input into the decision making process, including where feasible (a) prior notice (by web posting, by e-mail, or according to Section 6.8) to the Registry explaining what specification or policy is being considered for adoption and why; (b) reasonable opportunities for the Registry to comment, in writing and at a public forum, before the specification or policy is established, and (c) a written statement of the specification or policy that is established and the reason(s) for its establishment.
- 5.2 Time Allowed for Compliance. The Registry shall be afforded a reasonable period of time (not to exceed four months unless the nature of the specification or policy established under Section 5.1 reasonably requires, as agreed to by ICANN and the Registry, a longer period) after receiving notice of the establishment of a specification or policy under Section 5.1 in which to comply with that specification or policy, taking into account any urgency involved. The Registry may not comply with that specification or policy if it is in conflict with the law of the Governmental Authority or the Governmental Communication.

## 6. Miscellaneous

- 6.1 Termination by the Registry. This Agreement may be terminated by the Registry upon six months written notice to ICANN, subject to the Governmental Authority's written approval.
- 6.2 Termination by ICANN. This Agreement may be terminated by ICANN in any of the following circumstances:

- 6.2.1 The Registry fails to cure any material breach of this Agreement within twenty-one days (or such longer reasonable period as may be necessary using best efforts to cure such breach) after ICANN gives the Registry written notice of the breach.
- 6.2.2 The Registry's action or failure to act has been determined by arbitration under Section 6.6 to be in violation of this Agreement and the Registry continues to act or fail to act in the manner that was determined to violate this Agreement for a period stated in the arbitration decision, or if no period is stated, twenty-one days.
- 6.2.3 The Registry acts or continues acting in a manner that ICANN has reasonably determined endangers the operational stability of the DNS or the Internet after the Registry receives seven days notice of that determination.
- 6.2.4 After ICANN has been notified by the Governmental Authority or determined that the Service Concession Contract has been terminated, or the term of the Governmental Authority's designation of the Registry as manager of the Delegated ccTLDs has expired and has not been renewed, ICANN gives notice of its intent to terminate to the Registry.
- 6.2.5 The Registry becomes bankrupt or insolvent.

This Agreement may be terminated in the circumstances described in Sections 6.2.1 through 6.2.3 above only upon thirty days notice to the Registry and the Governmental Authority (occurring after the Registry's failure to cure during the stated period), with the Registry being given an opportunity during a thirty-day notice period to initiate arbitration under Section 6.6 to determine the appropriateness of termination under this Agreement. In the event the Registry initiates arbitration concerning the appropriateness of termination by ICANN, the Registry may at the same time request that the arbitration panel stay the termination until the arbitration decision is rendered, and that request shall have the effect of staying the termination until the decision or until the arbitration panel has granted an ICANN request for lifting of the stay. In case the intention to terminate this Agreement because of a material breach concerns a dispute over financial contributions, the termination shall be stayed until the arbitration decision is rendered; in this case, the arbitration panel shall only conclude that there is a material breach when it finds that the financial contribution is reasonable and equitable. If the Registry acts in a manner that ICANN reasonably determines endangers the operational stability of the DNS or the Internet and upon notice does not immediately cure, ICANN may suspend this Agreement for five calendar days pending ICANN's application for more extended injunctive relief under Section 6.6. This Agreement may be terminated immediately upon notice to the Registry in the circumstances described in Sections 6.2.4 and 6.2.5.

- 6.3 Automatic Termination. The contract is automatically terminated at the expiry or termination date of the Service Concession Contract or unless otherwise agreed by the parties and made effective in accordance with Section 6.15.
- 6.4 Effect of Termination. Upon expiration or termination of the Service Concession Contract between EURid and the European Commission, and of this Agreement between EURid and ICANN, EURid and the successor shall cooperate to transfer

operation of the Delegated ccTLDs according to ICANN policy as adopted via the ccNSO or otherwise governing ccTLDs in general. To the extent not in conflict with any such existing ICANN policy, the Service Concession Contract may also govern such transition. The manner or result of selection of the successor shall not be subject to challenge by the Registry. The parties shall then cooperate to transfer operation of the Delegated ccTLDs to that successor. In particular, the Registry shall ensure the transfer of all relevant DNS and registry data to the successor, subject only to the successor's commitment to use the data in a manner consistent with the Registry's prior written commitments made to data subjects regarding the use of their personal data and to the applicable law on personal data protection. The Registry acknowledges that upon termination of this Agreement and completion of the process of reassignment to a successor Registry it will cease to be the recognized manager of the Delegated ccTLDs. The Registry accepts to continue performing all necessary registry tasks until the reassignment process is completed. The Registry shall indemnify, defend, and hold harmless ICANN (including its directors, officers, employees, and agents) from and against any and all claims, damages, liabilities, costs, and expenses, including reasonable legal fees and expenses, arising out of termination of this Agreement according to Section 6.2.

- 6.5 No Monetary Liability. No breach of an obligation arising under this Agreement shall give rise to monetary liability by one party to another.
- 6.6 Resolution of Disputes. Disputes arising under, in connection with, or related to this Agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce ("ICC"). The arbitration shall be conducted in English and shall occur at a location agreed by the parties or, in the absence of agreement, in a location agreed by the arbitration panel. There shall be three arbitrators: ICANN shall choose one arbitrator, the Registry shall choose one arbitrator, and, if those two arbitrators do not agree on a third arbitrator, the third shall be chosen according to the ICC rules. ICANN and the Registry shall bear the costs of the arbitration in equal shares, subject to the right of the arbitrators to reallocate the costs in their award as provided in the ICC rules. The parties shall bear their own attorneys' fees in connection with the arbitration, and the arbitrators may not reallocate the attorneys' fees in conjunction with their award. The arbitrators shall render their decision within ninety days of the conclusion of the arbitration hearing. For the purpose of aiding the arbitration and/or preserving the rights of the parties during the pendency of an arbitration, the parties shall have the right to seek a stay or temporary or preliminary injunctive relief from the arbitration panel or in a court having jurisdiction in the city of legal residence of the party against whom injunction is sought, which shall not be a waiver of this arbitration agreement. In all litigation involving the parties to this Agreement, jurisdiction and venue for such litigation shall be in a court having jurisdiction in the city of legal residence of the plaintiff; however, the parties shall also have the right to enforce a judgment of such a court in any court of competent jurisdiction.
- 6.7 Choice of Law. Issues of law arising in connection with the interpretation of this Agreement shall be resolved by (a) the rules of law determined by the conflict of laws rules which the arbitration panel considers applicable and (b) such rules of international law as the arbitration panel considers applicable; provided that the validity, interpretation, and effect of acts of the Governmental Authority and the Registry shall be judged according to the laws of Belgium and the validity,

interpretation, and effect of acts of ICANN shall be judged according to the laws which apply to a California, USA non-profit public benefit corporation.

- 6.8 Notices. Except as otherwise specifically provided, all notices to be given under this Agreement to the parties or the Governmental Authority shall be given in writing at the address as set forth below, unless the recipient has given a notice of change of address in writing. Any notice required by this Agreement shall be deemed to have been properly given when delivered in person, when sent by electronic facsimile, or when scheduled for delivery by internationally recognized courier service.

If to ICANN, addressed to:

Internet Corporation for Assigned Names and Numbers  
12025 Waterfront Drive, Suite 300  
Los Angeles, California 90094 USA  
Telephone: +1.310.301-5800  
Email: [globalsupport@icann.org](mailto:globalsupport@icann.org)  
Attention: President and CEO  
With a required copy to General Counsel

If to the Registry, addressed to:

EURid vzw  
Telecomlaan 9, box 7, B-1831 Diegem, Belgium  
Telephone: + 32 2 401 27 50  
Email: [domain-admin@eurid.eu](mailto:domain-admin@eurid.eu)  
Attention: General Manager

If to the Governmental Authority:

The Director General  
DG CONNECT  
European Commission  
Rue de la Loi 51, 1000 Brussels  
Belgium  
Email: [cnect-desk@ec.europa.eu](mailto:cnect-desk@ec.europa.eu)

- 6.9 Dates and Times. All dates and times relevant to this Agreement or its performance shall be computed based on the date and time observed in Los Angeles, California, USA.
- 6.10 Language. All notices, designations, determinations, and specifications made under this Agreement shall be in the English language.
- 6.11 Subcontracting. Subject to any restrictions imposed by the terms of the Governmental Communication, the Registry may subcontract part or all of the technical operations of the registry for the Delegated ccTLDs only under terms that ensure that the subcontractor has the technical qualifications to carry out such work. In any subcontracting of the technical operations of the registry or administrative and management functions of the Delegated ccTLDs, the subcontract must state that the delegation itself is an exercise of a public right, not an item of property, and cannot be reassigned to a new manager except by ICANN. The Registry's obligations to ICANN under this Agreement shall not be diminished

or affected by the fact it has subcontracted some operations or functions with respect to the Delegated ccTLDs. For the avoidance of doubt, the Registry may not subcontract pursuant to this Section 6.11 in contravention of any of the principles it has committed to under the Risk Mitigation Plan.

- 6.12 Assignment. Any assignment of this Agreement shall be effective only upon the assignee's written agreement, enforceable by the other party, to assume the assigning party's obligations under this Agreement. Moreover, neither party may assign this Agreement without the prior written approval of the other party. The Registry may not assign this Agreement without the prior approval of the Governmental Authority. Notwithstanding the foregoing, ICANN may assign this Agreement by giving written notice to the Registry (a) in conjunction with a reorganization or re-incorporation of ICANN, to another non-profit corporation organized for the same or substantially the same purposes as ICANN.
- 6.13 Entire Agreement. This Agreement (including its Attachments, which form a part of it) constitutes the entire agreement of the parties hereto pertaining to the matters covered in this Agreement and supersedes all prior agreements or exchanges of letters relating to the operation of the Delegated ccTLDs, as well as all understandings, negotiations and discussions, whether oral or written, between the parties on those matters. In the event of a conflict between the provisions in the body of this Agreement (Sections 1 to 6) and any provision in its Attachments, the provisions in the body of the Agreement shall control.
- 6.14 Review of Agreement. At the request of either party, the parties will in good faith review the appropriateness of the provisions of this Agreement in view of any materially changed circumstances. Any modifications agreed as a result of such a review will become effective only in accordance with Section 6.15.
- 6.15 Amendments and Waivers. No amendment, supplement, or modification of this Agreement or any provision hereof shall be binding unless executed in writing by all parties. No waiver of any provision of this Agreement shall be binding unless evidenced by a writing signed by the party waiving compliance with such provision. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof, nor shall any such waiver constitute a continuing waiver unless otherwise expressly provided.
- 6.16 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- 6.17 Conflicts. In cases in which any part of this Agreement may be in conflict with the Governmental Communication or with European Union law, the Governmental Communication or European Union law prevail.

**\*\*\* Signatures to Follow on Next Page \*\*\***

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate by their duly authorized representatives.

**AGREED:**

**INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS**

By: \_\_\_\_\_  
Theresa Swinehart  
Senior Vice President, Global Domains and Strategy

**EURID VZW**

By: \_\_\_\_\_  
Peter Janssen  
General Manager

# ATTACHMENT A

## Specifications and Policies

### 1. Standards Compliance

- 1.1. **DNS.** The Registry shall comply with relevant existing RFCs and those published in the future by the Internet Engineering Task Force (IETF), including all successor standards, modifications or additions thereto relating to the DNS and name server operations including without limitation RFCs 1034, 1035, 1123, 1982, 2181, 2182, 3226, 3596, 3597, 4343, 5966 and 6891. DNS labels may only include hyphens in the third and fourth position if they represent valid IDNs (as specified above) in their ASCII encoding (e.g., "xn--ndk061n"). It is acknowledged and agreed that the Registry is in charge of managing possible legacies relating to domain name registrations.
- 1.2. **EPP.** If the Registry uses EPP as a registration protocol, it shall comply with relevant existing RFCs and those published in the future by the Internet Engineering Task Force (IETF) including all successor standards, modifications or additions thereto relating to the provisioning and management of domain names using the Extensible Provisioning Protocol (EPP) in conformance with RFCs 5910, 5730, 5731, 5732 (if using host objects), 5733 and 5734.
- 1.3. **DNSSEC.** If the Registry signs its TLD zone files implementing Domain Name System Security Extensions ("DNSSEC"), it shall comply with RFCs 4033, 4034, 4035, 4509 and their successors, and follow the best practices described in RFC 4641 and its successors. If the Registry implements Hashed Authenticated Denial of Existence for DNS Security Extensions, it shall comply with RFC 5155 and its successors. The Registry shall accept public-key material from child domain names in a secure manner according to industry best practices.
- 1.4. **IDN.** If the Registry offers Internationalized Domain Names ("IDNs"), it shall comply with RFCs 5890, 5891, 5892, 5893 and their successors. The Registry shall comply with the ICANN IDN Guidelines at <https://www.icann.org/en/topics/idn/implementation-guidelines.htm>, as they may be amended, modified, or superseded from time to time. Should there be national and/or international regulations that need to be followed by the Registry for the deployment of IDNs, they will have always priority against any ICANN IDN Guideline. The Registry shall publish and keep updated its IDN Tables and IDN Registration Rules in the IANA Repository of IDN Practices as specified in the ICANN IDN Guidelines.
- 1.5. **IPv6.** The Registry shall be able to accept IPv6 addresses as glue records in its Registry System and publish them in the DNS. The Registry shall offer public IPv6 transport for, at least, two of the Registry's name servers listed in the root zone with the corresponding IPv6 addresses registered with IANA. The Registry should follow "DNS IPv6 Transport Operational Guidelines" as described in BCP 91 and the recommendations and considerations described in RFC 4472. The Registry shall offer public IPv6 transport for its Registration Data Publication Services as defined in Specification 4 of this Agreement; e.g., Whois (RFC 3912), Web based Whois. The Registry shall offer public IPv6 transport for its Shared Registration System (SRS) to any Registrar.

- 1.6. **Registration Data Directory Services.** The Registry will operate a WHOIS service available via port 43 in accordance with RFC 3912, and a web-based Directory Service providing free public query-based access. The Registry may implement a new standard supporting access to domain name registration data in a timely manner if: 1) the IETF produces a standard (i.e., it is published, at least, as a Proposed Standard RFC as specified in RFC 2026); 2) its implementation is commercially reasonable in the context of the overall operation of the registry; and 3) the new standard is in full compliance with any possible national and/or international regulation to which the Registry might be subject.

## 2. **Registry Continuity**

- 2.1. **High Availability.** The Registry will conduct its operations using network and geographically diverse, redundant servers (including network-level redundancy, end-node level redundancy and the implementation of a load balancing scheme where applicable) to ensure continued operation in the case of technical failure (widespread or local), or an extraordinary occurrence or circumstance beyond the control of the Registry. The Registry's emergency operations department shall be available at all times to respond to extraordinary occurrences.
- 2.2. **Extraordinary Event.** The Registry will use commercially reasonable efforts to restore the critical functions of the registry within twenty-four (24) hours after the termination of an extraordinary event beyond the control of the Registry and restore full system functionality within a maximum of forty-eight (48) hours following such event, depending on the type of critical function involved. Outages due to such an event will not be considered a lack of service availability.
- 2.3. **Business Continuity.** The Registry shall maintain a business continuity plan, which will provide for the maintenance of Registry Services in the event of an extraordinary event beyond the control of the Registry or business failure of the Registry. The Registry shall conduct Registry Services Continuity testing according to its planning and the obligations against the Governmental Authority.

## 3. **Abuse Mitigation**

- 3.1. **Abuse Contact.** The Registry shall provide to ICANN and publish on its website its accurate contact details including a valid email and mailing address as well as a primary contact for handling inquiries related to malicious conduct in the TLD, and will provide ICANN with prompt notice of any changes to such contact details.
- 3.2. **Malicious Use of Orphan Glue Records.** The Registry shall take action to remove orphan glue records (as defined at <https://www.icann.org/en/committees/security/sac048.pdf>) when provided with evidence in written form that such records are present in connection with malicious conduct.