January 29, 2018

Göran Marby
President
Internet Corporation For Assigned Names and Numbers
12025 Waterfront Drive, Suite 300
Los Angeles
CA 90094-2536, USA

Dear Mr. Marby,

Re: Proposed Interim Models for Compliance with ICANN Agreements and Policies in Relation to the European Union's General Data Protection Regulation

The Association for Progressive Communications (APC) welcomes the opportunity to provide comments on the Proposed Interim Models for Compliance with ICANN Agreements and Policies in Relation to the European Union's General Data Protection Regulation (GDPR). APC, a longtime organisational member of the Non Commercial Stakeholder Group (NCSG), is an international network (with 86 members in 74 countries) and non-profit organisation founded in 1990 that works to help ensure everyone has access to a free and open internet to improve lives and create a more just world.

APC considers Model 3 to be the best option for ICANN to comply with the GDPR and believes it would mark an important step towards safeguarding the private information of site owners. In our view Model 1 does not go far enough to protect the privacy of site owners. Requiring that third parties self-certify their legitimate interests for accessing the data does not meaningfully safeguard the private information of site owners, as legitimate interest is not defined and does not necessarily correspond with the public interest, and self-certifying does not provide any objective oversight to ensure that a public interestt is met. Model 2 would require the development of a potentially complex and contentious accreditation mechanism, which we feel also requires a policy process.

Finally, APC prefers Model 3 as we consider it to be the preferred option both from a privacy and due process perspective. As we highlighted previously, as part of an alliance of digital rights groups, anti-harassment initiatives, media advocacy groups, women's rights organizations, and private individuals, the public display of personal information can physically endanger many domain owners and disproportionately impact those who come from marginalized communities.[1]

As an international NGO and network based primarily in the global South and working at the intersection of technology, human rights, gender equality, and social justice, it is our experience that people perceived to be women, people of colour, or LGBTQ, as well as ethnic and cultural minorities are often targeted for harassment for their online activities, and such harassment inflicts significant harm. Nonetheless, human rights defenders, women, people who face discrimination based on their sexual orientation and gender identity, and others whose location in society may put them situations of vulnerability rely on the internet to exercise their human rights.[2] Including thick

1 Joint letter to ICANN: New proposal will endanger domain owners and impact marginalized communities. July 2015 https://www.apc.org/en/pubs/joint-letter-icann-new-proposal-will-endanger-doma

2 For example, APC's 2017 EROTICS Global Survey on Sexuality, Rights, and Internet Regulation found that 88%

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registration data, such as physical addresses and email addresses, leaves site owners vulnerable to doxing, swatting, and hate mail.[3] These are not just hypothetical or trivial risks. An APC staff member whose address was included in the WHOIS database received a death threat directed at herself and her family in the early 2000s as a result of a website at a subdomain of APC.org. The site reflected political views which the person who made the death threat did not agree with.

Model 3 includes steps to mitigate such risks, while also allowing for making available relevant data of sites that host abusive content, such as the non-consensual dissemination of intimate content, also known as "revenge porn", in response to a subpoena or other order from a court or other judicial tribunal of competent jurisdiction.

Sincerely,

Anriette Esterhuysen
Director of Policy and Advocacy

respondents, who are sexual rights activists or identify as LGBQTI consider that the internet enables and increases the power, visibility, communication and organisation of women and sexual minorities. See: APC. 2017 EROTICS Global Survey on Sexuality, Rights, and Internet Regulation. December 2017. https://www.apc.org/sites/default/files/Erotics_2_FIND-2.pdf

3 "Doxing" is the malicious practice of obtaining someone's personal information (e.g. home address, phone number, etc) and making that information more readily and widely available. Doxing makes possible a wide range of crowdsourced harassment and intimidation, which includes everything from unwanted pizza deliveries to unrelenting barrages of rape- and death threats. Doxing also enables "swatting," or calling in false tips that send a fully armed SWAT team crashing through a targeted person's door. Public online directories give doxers, swatters, and stalkers alike easy access to their targets' personal information. See: Joint letter to ICANN. July 2015.

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