

APM → GERTRAUDENSTRASSE 20 → D-10178 BERLIN

ICANN
Mr. Göran MARBY
President and CEO

Re: WHOIS and the implementation of the EU General Data Protection Regulation

Berlin, 06 March 2018

Dear Mr Marby,

We would like to share with you, on behalf of the members of the German Anti-Counterfeiting Association (APM), our deep concerns regarding the matter of the publication of WHOIS data further to the implementation of the EU General Data Protection Regulation.

It is clear from the input ICANN has already received and shared via the website that many businesses that rely on WHOIS but who are not engaged in ICANN policy making are only just becoming aware that WHOIS may change and providing input on their use cases that needs to be reflected.

We request that a final decision is made after ICANN61 in Puerto Rico, in order to enable the widest possible engagement from all stakeholders.

We note that the input from the EU Commission itself highlights the need for a proportionate approach, limited to data covered by the regulation rather than an across the board application to all data. This is of course in line with both the input from the GAC, ICANN's own mission of openness and is consistent with an interim solution that does not usurp existing policy development processes.

The EU Commission, amongst many other actors, have highlighted that WHOIS data that can be cross-compared is a vital resource for identifying frauds - whether phishing, spam, counterfeiting, piracy or other crime and that the private sector is a vital and proactive part of that effort. Processing for these purposes and the continuing ability of both private and public actors to conduct this work needs to be part of any chosen model, as set out in the letter to you from COA dated 16 February, and the letter to WP29 from the IPC and BC dated 8 February.

We insist on the fact that it is crucial that right-holders keep their prerogative to have a direct access to all WHOIS detailed information. Should ICANN not agree, we echo the GAC's request, as emphasized in their Feedback on Proposed Interim Models for Compliance, for careful consideration of the practical details of layered access to non-public data and their consequences on all parties involved prior to settling on a model.

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Denying private stakeholders, that seek to identify infringers and defend their IP rights, access to the database would be detrimental to the goal of Directive 2004/48/EC on the enforcement of intellectual property rights (IPRED) which is to ensure a high level of protection for intellectual property rights.

We thank you in advance for your help and kindly ask you to believe in the assurance of our respectful consideration.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Volker Bartels', written in a cursive style.

Volker Bartels
Chairman APM e.V.