

The logo for ARTICLE 19, featuring the text "ARTICLE 19" in white, bold, sans-serif font, set against a dark orange, irregular, arrow-like shape pointing to the right.

29 January 2018

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

Noting that the period for comments on this draft was significantly shorter than in normal public comment processes, we welcome the opportunity to provide feedback on the three proposed models for GDPR compliance. ARTICLE 19 is an international non-profit organization that has been defending and promoting of freedom of expression and freedom of information around the world since 1987. In recent years, ARTICLE 19 has become a consistent presence in the ICANN community and champion for human rights, particularly privacy and freedom of expression.

First, as ICANN Org is guided by its Bylaws, we would like to direct attention to Article 1.2(b)(viii), the Human Rights Core Value obliging ICANN to respect internationally recognized human rights as required by applicable law. Though this Core Value remains inactive pending approval of the CCWG-Acc Work Stream 2 recommendations, the various levels of community consensus behind the Core Value and the corresponding FOI are relevant to this debate and should not be overlooked.

In terms of the compliance models set forth, we find **Model 3** to be preferable, and the only model acceptable in terms of both GDPR and international human rights law. In addition to providing the most comprehensive provisions for privacy and due process, Model 3 presents a durable, scalable solution that will remain applicable if and when additional countries adopt data protection regimes similar to GDPR—a trend that can be anticipated given the number of countries that modeled their national regimes after the preceding EU Data Protection Directive. Moreover, Model 3 circumvents the need to define a formal accreditation or certification program as required in Model 2, as well as avoids the immense burden and responsibility Model 1's self-certification scheme would impose on registries and registrars in the likely scenario that such a program was not developed by 25 May.

We join our colleagues from the Electronic Frontier Foundation in suggesting that registration-by-registration, field-by-field assessments can be avoided by assuming that the name, phone number, and address fields contain personal data by default and should therefore be withheld from public display unless the registrant provides voluntary, informed consent for their display.

We look forward to continuing this much-needed conversation about privacy moving forward.

Best regards,

Collin Kurre
Co-Chair, Cross-Community Working Party on ICANN and Human Rights
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