



Canadian
Anti-Counterfeiting
Network

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VIA EMAIL

Mr. Goran MARBY
President and CEO
ICANN
goran.marby@icann.org & gdpr@icann.org

Toronto, Canada, March 26th 2018

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

Dear Mr. Marby,

On behalf of the Canadian Anti-Counterfeiting Network (CACN), we would like to share our concerns regarding the matter of WHOIS data publication and the implementation of the EU General Data Protection Regulation.

From the input ICANN has received and shared via the website, many businesses that rely on WHOIS, but who are not engaged in ICANN policy making, are only just becoming aware that WHOIS may change.

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 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 internet has become a vast resource for communication, commerce and unfortunately, criminality. There is a necessity for transparency in the way the internet operates, so that those who use it for harm can be held accountable and for the transparency to act as a deterrent measure for future misuse. ICANN's proposal to require registrars and registries to remove from public access basic information, such as, email addresses used obtain a domain name, will greatly hinder investigation into illicit online activity, including sale of counterfeit goods and overall theft of intellectual property. We do not suggest that ICANN should allow unlimited publication of individual domain name holders' personal data. The GDPR does not require ICANN to withdraw basic information from public view and it does not apply to information about companies, yet ICANN is proposing to restrict access to data governing not just persons, but also legal entities.



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The EU Commission, amongst many other actors, have highlighted that WHOIS data that can be cross-compared is a vital resource for identifying fraud - whether that fraud is in the form of phishing, spam, counterfeiting, piracy or other crime. 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 maintain their prerogative to have direct access to all WHOIS detailed information. Should ICANN not agree, we echo the ICANN Governmental Advisory Committee (GAC) 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 deciding on a model.

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

The Canadian Anti-Counterfeiting Network (CACN) is a coalition of individuals, businesses and associations that have united in the fight against product counterfeiting, fraud and copyright piracy in Canada and abroad.

CACN members include law enforcement agencies, investigation firms as well as associations and brand rights holders that span nearly every industry: pharmaceuticals, electrical, electronics, music & film, consumer goods, food & beverage, clothing & footwear, software and many others.

To view a listing of all CACN members, visit www.cacn.ca.

Sincerely,

Katalin Molnar
CACN, Vice Chair