

In reply to ICANN-Proposed Compliance Models

We write to you on behalf of GMO Brights Consulting Inc., a Japanese brand protection firm specializing in domain name, trademark, and anti-counterfeit consulting for many large and world-renowned Japanese brands. We are also an ICANN accredited registrar for several Brand TLDs, active in many discussions with Brand registries, and a member of the Intellectual Property Constituency.

We write to you in regards to the recent request for feedback about ICANN-Proposed Compliance Models for Community Discussion. First, we thank ICANN for the opportunity to comment on the proposed compliance models. We share many of the concerns echoed in previous comments about maintaining access to a WHOIS system as close as it is today for law-enforcement, intellectual property lawyers, brand protection agencies, and those actively involved in counteracting unlawful behaviour. We understand the need for privacy law, however, we emphasize that WHOIS is an important tool in researching and acting against online cases of abuse, infringement, and cybercrime. In our own practice we rely upon accurate and available WHOIS information. We believe, as stated in previous comments, access to the data listed in WHOIS for these reasons is within a legitimate purpose.

After our analysis of the models proposed by ICANN, we believe that Model 1 is closest and most adequate for an interim solution if deemed by ICANN to be compliant with GDPR. With the public displayed data fields outlined by ICANN in Model 1, we think that WHOIS will remain an effective tool to guarantee swift access to necessary data for the above listed parties to enforce and take action. While it would be preferable to have an email point of contact to the registrant of a domain, this can be achieved by means of a proxy or privacy email that would forward to the registrant. We recommend that this element be explored further. As for accessing data not published in the public WHOIS, a self-verification to allow for access to more data would provide the ability to timely access necessary information, albeit an extra step, it is still a process that allows for effective analysis. In regards to how this process is modelled and by what terms the registry or registrar would consider a request for such data, we suggest that ICANN consider having in place a guideline for what means a request for data would serve legitimate purpose in line with GDPR. This will allow for better judgement by registries and registrars to approve requests as well as provide ICANN with a clear means for resolving issues in regards to requests not being approved.

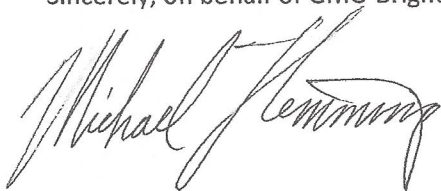
As for Model 2, we think that this would impede more than necessary those with a legitimate purpose in accessing data. If upon further consideration and deliberation it is determined that the minimum publicly displayed data as shown in Model 1 is not the path to move forward, then Model 2 would be the favourable approach. To maintain swift access to data fields not shown in public WHOIS, we believe that it is necessary to have a formal accreditation/certification process that recognizes the needs of not just law enforcement agencies and intellectual property lawyers, but those enforcing brand rights as well. Such process should also allow for timely access. Furthermore, we note that application should be limited to those parties that are subject to GDPR as listed in Model 2A, rather than on a global basis as in Model 2B.

Our analysis of Model 3 led to the conclusion that this is the least preferred path forward. We believe this will lead to not only an unnecessary cumbersome process for responding to threats and enforcement but also a path unfavourable for registrants. Offering some point of contact is in the best interest for registrants as well when contacting them about a security threat, offer to buy the domain name, or for other purposes.

Lastly, we recommend that upon ICANN adopting a path forward, registries and registrars who have begun to implement their own solutions to abide by GDPR, should implement the path adopted by ICANN in order to guarantee access to a reliable WHOIS without deviation to a registry or registrar's own interpretation of a compliant WHOIS model.

We thank you for the consideration of these comments.

Sincerely, on behalf of GMO Brights Consulting,



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