

January 29th, 2018

Mr. Göran Marby  
President, ICANN

# **Proposed Interim Models for Compliance with the European Union's General Data Protection Regulation**

The Registrar Stakeholder Group has considered how best to approach the EU's General Data Protection Regulation (GDPR). It would like to share its considerations and thoughts with ICANN. In the limited time available, it has proven impossible to formulate a final and perfected response to the GDPR. To that extent, we recognize that further development is required. Nevertheless, it is the view of our stakeholders' group that certain principles must be adhered to as we, the Registrars, and ICANN proceed.

First, we recognize that this issue is important to the ICANN community, but it is of direct legal consequence to registrars and registries. As we are the entities directly bearing the legal obligations engendered by the GDPR, our views should be considered of prime importance in the formulation of a response. A general consensus among all stakeholder groups might be nice to have, but is irrelevant to the legal burdens we will face.

This leads us to the second observation. The appropriate model will be one that is worked on in conjunction with the registrars and registries. In fact, ICANN developing models without Registrar involvement, after multiple letters requesting a collaborative approach, is extremely disappointing. Development work takes months of planning, coding, and testing. Registrars have been working on GDPR compliance solutions for months, with existing implementation plans in place and work underway, if not entirely complete. New models are too late to be accommodated by the upcoming GDPR enforcement deadline. Further, the models that have been proposed by ICANN for consideration are not compliant with the GDPR, for various reasons. But whether they comply or not with the GDPR is not the point with which we are concerned here.

Our point is that ICANN Org and the other stakeholder groups are not in a position to pick a compliance model for the registrars and registries. Only the Registrars and Registries are rightly endowed with the responsibility to answer to the GDPR. This point needs to be appreciated by ICANN Org and the other stakeholder groups. We do not doubt that ICANN has legitimate concerns to advance in responding to the GDPR, but registrars and registries are in the position of greatest direct legal liability. Contracts between RrSG members and ICANN must comply with the requirements of the GDPR, as our responses to the GDPR are

worked out. It is not for ICANN Org to unilaterally choose a model for us, nor to substitute its views of the risks registrars face for non-compliance with the GDPR.

In this regard a number of registrars have been developing a model referred to as the [ECO model, whose features are described in this document here](#). The eco model is not formally endorsed by the RrSG. However, we find it the most robust and the most thorough currently available. It addresses the risks as the registrars see them and forms a reasonable plan for our implementation. Other groups may have different views of the ECO model, which is understandable. Some may think that it is too risk-averse. Our response to that idea is that, if others think that the ECO model is too risk averse, they need to justify and explain to Registrars how those risks are mitigated.

I add that, in the development of a successful compliance model, registrars will in addition need to engage with their end customers, the registrants.

We appreciate that forthcoming changes to the way that data is gathered and shared is causing anxiety in some quarters, and we understand the frustration over the fact that data publication will change in ways that are not yet clear. From our perspective, however, the GDPR was not a law of our making, and we are taking the steps we believe are appropriate to comply with the new law, while also taking account of our obligations under our contract with ICANN. We encourage ICANN, and its community of interested participants to pause and wait to see what the parties with data processing obligations do to comply with this new legal rubric. After our implementation solutions have been tested and made public, and after we have additional guidance from relevant data protection authorities, we encourage ICANN to review, and help us revise if necessary, our data processing and publication practices. We believe that our obligations and the scope of GDPR will become clearer in time, and we encourage ICANN to work with us on a long-term solution, not a hasty solution just weeks before the enforcement deadline.

Yours sincerely

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