

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

SEAN HEATHER
VICE PRESIDENT
CENTER FOR GLOBAL REGULATORY
COOPERATION

1615 H STREET, N.W.
WASHINGTON, D.C. 20062-2000
202/463-5368

April 6, 2018

Cherine Chalaby
Chairman
Internet Corporation for Assigned Names and Numbers (ICANN)
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536

Dear Chairman Chalaby,

In an era of unprecedented exposure of personal information, legitimate oversight of the protection and use of personal data is both prudent and necessary. However, regulatory overreach brings unintended consequences, as is the case with the European Union's General Data Protection Regulation (GDPR). This regulation poses serious questions around governance, transparency, and accountability. Our members sympathize with and share the compliance challenges faced by ICANN, among many others.

ICANN has stated its objective is to identify the appropriate balance for a path to ensure compliance with the GDPR while maintaining the existing WHOIS system to the greatest extent possible. However, the restriction of data within the Proposed Interim Model fails to achieve that balance. Instead, as proposed, it creates unintended consequences that would significantly limit the ability to actively manage and investigate cybersecurity threats and illicit activity online.

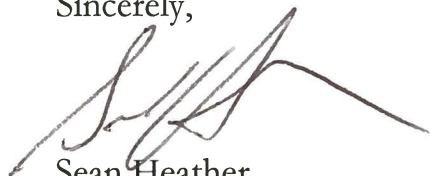
ICANN's WHOIS database plays an indispensable role in ensuring good governance, accountability, and transparency for the Internet. Legitimate public access to that database is crucial to the effective identification, prioritization, and allocation of resources to the policing of malicious and unlawful activity on the Internet and is fundamental to ICANN's core mission. Given these realities, the Proposed Interim Model selected for GDPR-compliance of the WHOIS registry poses existential challenges to the ICANN mission. Our members are deeply concerned about the public health and safety, cybersecurity and consumer protection threats associated with this erosion.

We recognize that GDPR compliance is challenging, which is why it is necessary for ICANN to pursue a path of careful deliberation on a model that best suits its mission rather than rush to finalize a short-sighted solution. We believe it is possible to modify the WHOIS database to be compliant, including maintaining port 43 and bulk access to identify patterns of domain name abuse, while protecting data elements including the registrant e-mail address as supplied to and verified by the registrar. As the ICANN Governmental Advisory Committee advised, the following principles are critical to providing a safe and secure online ecosystem but have not yet been realized in a compliance model:

- Provide a distinction between natural person registrants and legal person registrants to permit public access to WHOIS data;
- Reconsider the proposal to hide the registrant email address as this may not be proportionate in view of the significant negative impact on law enforcement, cybersecurity, and rights protection;
- Ensure continued access to WHOIS data, including non-public data, for users with a legitimate purpose, until the time when the interim WHOIS model is fully operational, on a mandatory basis for all contracted parties; and
- As is permitted under GDPR, allow users with a legitimate interest to access WHOIS data.

We look forward to our continued engagement with you and your colleagues at ICANN.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Heather', with a long horizontal stroke extending to the right.

Sean Heather
Vice President

CC: European Union Article 29 Working Party