

From: Brian Winterfeldt

Date: Wednesday, March 28, 2018 at 23:29

To: Cherine Chalaby, Göran Marby

Subject: RE: [Ext] RE: Updated Accreditation Model

Dear Cherine and Goran,

I am writing to share some additional information on our latest community-developed accreditation proposal for access to non-public WHOIS data under the Interim GDPR Compliance Model, and to share an important request regarding the recent GAC Consensus Advice from ICANN 61.

Accreditation System

We have formally received support from a majority of IPC members for the current version of our draft accreditation model proposal (version 1.3, which we previously provided you and which we re-attach here for convenience). Please note that this version incorporates all the input that we have received to date from stakeholders across the ICANN community. This model is now ripe for further consideration and discussion by the community. We invite Steve DelBianco, copied here, to share his thoughts on the BC's support for this proposed accreditation model.

Given the substantial time and effort that has gone into this proposal (which we originally initiated at your suggestion), we write again to request that ICANN share it with the DPAs, including at all upcoming meetings. We believe this detailed proposal will assist you in advocating with the DPAs for further guidance and for interim forbearance from GDPR enforcement. Forbearance from the DPAs will allow the ICANN community the critical extra time needed to complete an operational WHOIS model that includes accredited access to non-public WHOIS data from day one.

We are also writing to remind you that ICANN staff has not yet provided us with the assistance it promised us in San Juan to support community efforts to further develop the accreditation model. We need your help to make sure that

Staff actually provides this support. To date, our repeated requests for assistance have gone unanswered. Development of a workable accreditation system goes hand in hand with the finalization of a GDPR interim model. We trust that ICANN will be placing equal priority on developing an accreditation model and step up to meet its obligations to the community and to the global public interest.

GAC Consensus Advice

With the support of the IPC, I also write to request action on the recent GAC Advice. As you know, the GAC Communique[\[gac.icann.org\]](http://gac.icann.org) from ICANN 61 contained Consensus Advice pertaining to the interim GDPR compliance model. Many of GAC's points align with concerns that the IPC, BC, and others in the community have repeatedly raised. We note that under ICANN's Bylaws, ICANN has an obligation to "take duly into account any advice timely presented by the Governmental Advisory Committee" particularly where such Advice relates to public policy matters.

The interim GDPR compliance model has clear public policy implications as it is designed to revise the existing WHOIS system to allow ICANN and its contracted parties to comply with the GDPR. This model must appropriately balance the individual privacy concerns enshrined in the GDPR with the other legitimate interests in accessing domain name registration data, such as for law enforcement, consumer protection and other government regulatory matters, private consumer protection efforts such as intellectual property enforcement, and cybersecurity. ICANN itself has assured us that its goal is to keep ICANN accessible "to the greatest degree possible." The GAC advice now provides you with clear guidance in several specific areas (e.g., retaining email address, distinguishing between legal and natural persons, allowing continued access to non-public data for users with a legitimate purpose and ensuring limits on query volume and accreditation programs are balanced and reasonable), which will help to ensure that WHOIS remains open to the greatest extent possible. Under its Bylaws, we believe that ICANN has an obligation to reconcile its existing compliance model with the specific points in the Communique that diverge from the current model, and to discuss the relevant divergences in your upcoming meeting with DPAs as well.

Accordingly, the Board should immediately instruct ICANN to update the compliance model to incorporate the GAC advice and we ask that you share the updated model with the DPAs. We are disappointed that ICANN did not update its model already and did not single out the significance of this GAC consensus advice for the DPAs. We respectfully request that you inform the DPAs fully of the importance of this GAC Advice and work quickly to update ICANN's model to incorporate it.

We would also greatly appreciate an update regarding what actions the Board has taken to date in response to this GAC Consensus Advice, its role going forward and its proposed timeline for taking action (keeping in mind that any action must be expedited given the May 25 effective date of GDPR).

Again, ideally, the DPAs would provide specific guidance that these would be permissible changes to the model, particularly in light of ICANN's stated goal of preserving the current WHOIS system to the greatest extent possible.

Per Goran's follow-up inquiries, we have sent similar comments regarding the accreditation model proposal and the recent GAC Consensus Advice directly to our DPA contacts (an exemplary copy of one such communication is attached, although we sent individual but otherwise identical such communications to each of the Article 29 Working Party members and the European Data Protection Supervisor, mirroring the letters Goran recently sent to these same contacts). Regarding this recent letter, we appreciated that it specifically reiterates the need for DPA guidance and hope this further outreach will result in helpful further action.

Thank you for your continued work on these issues and we look forward to receiving an update from your meeting with the DPAs.

Best regards,

Brian