

18 May 2015

**Summary and Analysis of comments for:  
Notice of Preliminary Determination To Grant Registrar Data Retention Waiver Request  
For CoreHub SRL**

The comment period ran from 27 March 2015 to 26 April 2015. One (1) public comment submissions was received, which may be viewed in their entirety at:

<http://forum.icann.org/lists/comments-corehub-srl-27mar15/>

*Disclaimer: The summary is not a full and complete recitation of the comments received. It is an attempt to capture in broad terms the nature and scope of the comments. The summary has been prepared in an effort to highlight key elements of the submissions in an abbreviated format, not to replace the comments. Every effort has been made to avoid mischaracterizations and to present fairly the views provided. Any failure to do so is unintentional.*

## **SUMMARY OF COMMENTS**

One comment was submitted by the GNSO Intellectual Property Constituency (the “IPC”) and said in part:

“IPC would not object in principle to the specific waiver requested, so long as it is adequately demonstrated that without a waiver the Registrar will face an irreconcilable conflict between its contractual obligations under the RAA and its legal duties under applicable national law.”

The IPC noted that in its three previous announcements granting data retention waiver requests, ICANN has never clearly specified the law which it deemed applicable as the basis for the waiver and contended that this raises questions concerning the scope of the presumption created in paragraph 2 of the Specification, under which other registrars subject to the same laws upon which ICANN based its decision to grant a waiver are presumptively entitled to a similar waiver. The IPC maintained that if ICANN ultimately decides to grant the waivers sought, it should clearly state that it is doing so on the basis of a specific cited provision of Spanish law, and that the “applicable jurisdiction,” for purposes of future waiver requests, is Spain.

IPC also requested that ICANN make clear that the waiver applies only to the post-sponsorship period of retention of data and not to any of the obligations of the Data Retention Specification that apply during the term of the sponsorship or during the reduced one-year post-sponsorship period of retention that would be required if the waiver is granted, nor to any other obligations of registrars under the 2013 RAA or ICANN policies, including all obligations with respect to the collection or maintenance of such data, as well as the obligation to make such data available to the public, through Whois or otherwise, during the term of the sponsorship.

## **ANAYLSIS OF COMMENTS**

ICANN appreciates the time spent by community members to provide their input on the potential grant of a data retention waiver to this Registrar. ICANN notes as well, that despite the comments raised by the IPC, this waiver would not be granted based on a previously granted waiver to any Registrar in Spain, but on the merits of the individual request itself.

### **Scope of Waiver If Granted**

ICANN appreciates the comments regarding the appropriate scope of any waiver that may be granted and will take these comments into consideration.

### **Conclusion**

ICANN is committed to working with registrars and the ICANN community to balance and reconcile the data retention requirements of the 2013 RAA with local, regional and national laws and regulations.

### **Commentators:**

**Name:**

Steve Metalitz

**On Behalf of:**

GNSO Intellectual Property Constituency