



November 14, 2017

RE: GDPR Ad-Hoc Working Group

Greg Shatan
President
ICANN Intellectual Property Constituency (IPC)

Dear Mr. Shatan

Thank you for your letter of 2 October 2017 which has been posted to the ICANN Correspondence [page](#). We recognize and share the ICANN community's concerns regarding the potential impact of the European Union's General Data Protection Regulation (GDPR) on WHOIS and its importance as it relates to stakeholders. Our reply herein reflects discussions of these topics at ICANN60 as well as developments related to the GDPR since the meeting.

As noted also at ICANN60, based on initial reviews and communications, including with some data protection agencies (DPAs), we believe that compliance with the GDPR will have an impact on the WHOIS system, and thus the domain name space. The purpose of the current community discussions and legal analysis that we are undertaking is to determine the scope of the impact. As a community, we need to work together to find the right balance between the current WHOIS services and compliance with local laws. To that end, we appreciate the IPC's contribution to this discussion with the [recent submission of a legal analysis](#) by the firm Taylor Wessing.

As you may be aware, ICANN org also commissioned an independent legal analysis from European law firm Hamilton. A [draft](#) of the initial analysis was shared for community feedback on 18 October 2017. The memo focuses on potentially challenging areas with existing requirements for registries and registrars to provide open, publicly available WHOIS services. It also highlights the complexity of these issues in the domain name space, and concludes that the current open, publicly available WHOIS services cannot remain unchanged.

Acknowledging this period of uncertainty, on 2 November 2017 ICANN org published a [statement](#) indicating that ICANN Contractual Compliance will consider deferring taking action against any registry or registrar for noncompliance with contractual obligations related to the handling of registration data under certain conditions. The action comes in direct response to those who have expressed concerns regarding the ability of registries and registrars to comply with the GDPR and their WHOIS and other contractual requirements related to domain name registration before the Next Generation gTLD Registration Directory Services Policy Development Process Working Group (RDS PDP WG) delivers a permanent solution balancing these obligations. We encourage you to continue your active participation in the RDS PDP WG.


In the meantime, ICANN org continues to collect information to aid the ongoing legal analysis of the GDPR's impact. As you mentioned, a matrix of user stories of the personal data the ICANN

org's contracted parties and interested stakeholders collect, transmit, or publish in relation to their contracts with ICANN was published. The matrix helps inform the discussions with pertinent stakeholders, including the DPAs, on the uses and purposes of the WHOIS services.

In parallel, ICANN org continues to engage with stakeholders on the possible implications of the legislation on existing WHOIS policy. We have also reached out to the leadership of ICANN's Supporting Organizations (SO) and Advisory Committees (AC) to provide them an opportunity to engage and join in meetings, as well as to provide their perspectives. In addition, we have engaged with the DPAs in Europe to gain a better understanding of the relevant aspects of the GDPR as it relates to the organization's work, as well as our contracts with registries and registrars. Finally, the recent ICANN60 meeting included a [community-led session](#) to provide updates and help facilitate additional conversation.

We expect that the release of the initial legal analysis and the next iteration will continue to fuel community discussions. Until then, the ICANN org will continue to work with the community and keep the community apprised of the GDPR discussions with regular updates to ICANN's data protection/privacy webpage. We look forward to continuing to work with you and the community on this important topic.

Sincerely,



Akram Atallah &
Theresa Swinehart