

Advisory Statement: Temporary Specification for gTLD Registration Data

Adopted on 17 May 2018 by ICANN Board Resolutions 2018.05.17.01 – 2018.05.17.09

On 17 May 2018, the ICANN Board of Directors (ICANN Board) adopted the Temporary Specification for generic top-level domain (gTLD) Registration Data (“Temporary Specification”) pursuant to the procedures for the establishment of temporary policies in ICANN’s agreements with Registry Operators and Registrars.¹ The Temporary Specification provides modifications to existing requirements in the Registrar Accreditation and Registry Agreements to bring them into compliance with the European Union’s General Data Protection Regulation (GDPR). Absent these modifications, ICANN, Registry Operators, and Registrars would not be able to comply with both the law and ICANN agreements when the GDPR goes into effect on 25 May 2018. This would result in the inability of ICANN to enforce its contracts. This would also result in each Registry Operator and Registrar making their own determination regarding what gTLD Registration Data should be collected, transferred and published, leading to a fragmentation of the globally distributed WHOIS system. Fragmentation of the WHOIS system would jeopardize the availability of Registration Data, which is essential to ensuring the security and stability of the Internet, including to mitigate attacks that threaten the stable and secure operation of the Internet. As such, the Temporary Specification is needed prior to 25 May 2018 to preserve the security and stability of registry services, registrar services, and of the Domain Name System (DNS).

ICANN’s role in providing the technical coordination of the globally distributed WHOIS system is a unique matter, including the public interest nature of WHOIS. For all the reasons put forth in this Advisory, the Temporary Specification should receive consensus support from the community to ensure the ongoing stability and security of the Internet, the globally distributed WHOIS system, and other processing of gTLD Registration Data, and consideration should be given to include the elements of the Temporary Specification in a consensus policy development process.

Impact of the Temporary Specification

When the Temporary Specification goes into effect on 25 May 2018, the WHOIS system will remain available, though there will be some changes. Registry Operators and Registrars are still required to collect all information. However, if you submit a WHOIS query, you will only receive “Thin” data in return, which includes only technical data sufficient to identify the sponsoring Registrar, status of the registration, and creation and expiration dates for each registration, but not personal data.

If you are a third party with legitimate interests in gaining access to the non-public data held by the Registry Operator or Registrar, there are still ways for you to access that data. You can look up the sponsoring Registrar and contact them, and they are obligated to respond to you in a reasonable time.

¹ See Specification 1 of the [Registry Agreement](#) and the [Consensus and Temporary Policies Specification](#) of the 2013 Registrar Accreditation Agreement.

If you do not get a response, ICANN will have a complaint mechanism available to you. If you find individual parties who you believe are not complying with their obligations under these temporary specifications or their agreements with ICANN, you may contact ICANN's Contractual Compliance Department to file a complaint.

Advisory Analysis

1. Preserving gTLD Registration Data and the globally distributed WHOIS system in the context of security and stability
 - 1.1. The WHOIS system was originally put in place so that in the event of network problems such as outages, problems with hardware or software, or other issues, a small network of researchers connected on the ARPANET could contact each other to resolve the issue.²
 - 1.2. Today, the WHOIS system provides a mechanism that allows Internet users to make contact with the end points of Internet communication, namely domain names and Internet addresses. In cases of attack or abuse that threaten the stable and secure operation of the Internet, timely availability of contact information is often the first step to mitigate the attacks.
 - 1.3. The stable operation of the Internet relies on the basic concept that you cannot run a hierarchical and decentralized system like the Internet (a network of networks) if you cannot find the people who operate it to warn of problems and coordinate responses to operational issues.
 - 1.4. In addition, the WHOIS system helps serve the public interest as it contributes to the security and stability of the Internet by providing contact information to support issues related to consumer protection, investigation of cybercrime, DNS abuse and intellectual property; as well as to address appropriate law enforcement needs.
 - 1.5. Throughout this time, including throughout ICANN's history, the WHOIS system has been an important part of ICANN's mission and mandate, and responsibilities relating to the WHOIS system are encapsulated in ICANN's Bylaws.
 - 1.6. Article 1, section 1.1(a) of ICANN's Bylaws specifies that ICANN's mission is: "[...] to ensure the stable and secure operation of the Internet's unique identifier systems [...]".
 - 1.7. Article 1, section 1.2(a) of ICANN's Bylaws notes "ICANN must operate in a manner consistent with these Bylaws for the benefit of the Internet community as a whole [...]". In this regard, ICANN's mission and mandate specifically requires ICANN to take into account the interests of others – not just ICANN organization. In line with this requirement for ICANN to act in the public interest:

² <https://www.icann.org/en/system/files/files/whois-high-level-technical-brief-20apr18-en.pdf>

- 1.7.1. The Bylaws in Article 4, section 4.6(e)(ii) require ICANN to undertake a periodic review of WHOIS. This review must take into account whether WHOIS is meeting the legitimate needs of others.
- 1.7.2. The Bylaws in Article 4, section 4.6 (d) specifically obligates ICANN to “adequately address issues of competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns, and rights protection” prior to authorizing an increase in the number of gTLDs in the root zone.
- 1.8. ICANN’s mission and mandate, as stated in ICANN’s Bylaws, has led to WHOIS obligations encapsulated in ICANN consensus policies and agreements that ICANN has with Registry Operators and Registrars.
- 1.9. These policies and contractual obligations set the minimum requirements governing the collection, retention, escrow, transfer, and display of Registration Data, which includes contact information of the registrant, administrative and technical contacts as well as technical information associated with a domain name. Each individual Registry Operator and Registrar maintains its own database of Registration Data, and operates its own registration directory service that currently provides open, public access to Registration Data to mitigate attacks that threaten the stable and secure operation of the Internet and to serve the public service uses identified above.
- 1.10. The GDPR imposes new obligations that would make it impossible for ICANN, Registry Operators, and Registrars to continue to comply with ICANN agreements and the law when the GDPR goes into effect on 25 My 2018.
- 1.11. This would result in the inability of ICANN to enforce its contracts. This would also result in each Registry Operator and Registrar making their own determination regarding what gTLD Registration Data should be collected, transferred and published, leading to a fragmentation of the globally distributed WHOIS system. Fragmentation of the WHOIS system would jeopardize the availability of Registration Data, which is essential to ensuring the security and stability of the Internet, including to mitigate attacks that threaten the stable and secure operation of the Internet.
- 1.12. To allow ICANN, Registry Operators, and Registrars to comply with the law while ensuring continued availability of Registration Data to the greatest extent possible and avoid fragmentation of the WHOIS system, the Temporary Specification will provide a single, uniform framework for ICANN, Registry Operators, and Registrar regarding Registration Data directory services.

2. Steps ICANN has taken to build consensus support of Internet stakeholders

- 2.1. ICANN has been engaging with Internet stakeholders over the past year to analyze and discuss the impact of the GDPR on how Registration Data is collected, processed and published, including potential changes to bring them into compliance with the GDPR. In June 2017, following discussions with the community, ICANN asked contracted parties and interested stakeholders to identify user types and purposes of data elements required by ICANN policies and contracts. The individual responses received were compiled in a gTLD Registration Data Flow Matrix, which was used to inform further legal analyses and help develop the purposes of processing gTLD registration data.³
- 2.2. ICANN solicited community input on its process for identifying an interim compliance model via two webinars and multiple sessions at ICANN meetings, in addition to regular dialogues with stakeholders, public community sessions at the ICANN meetings, and ongoing input received through gdpr@icann.org.⁴ A webinar in October 2017 provided the community with an overview of ICANN's approach to complying with the GDPR. A second webinar in February 2018 focused on ICANN's three proposed interim compliance models and sought questions and feedback on those. Cross-community sessions at ICANN60 and ICANN61 provided additional fora for receiving community feedback.⁵ Throughout this process there's been regular dialogues with the community, and since September 2017, ICANN has provided updates to the community on at least a monthly basis, and has provided multiple opportunities for community consultation and feedback.⁶ Additionally, ICANN's communication and engagement teams have been working to ensure information is distributed to the wider community.
- 2.3. At the request of the community, ICANN commissioned European law firm Hamilton to produce a series of memoranda outlining the GDPR's impact on gTLD Registration Data and directory services. ICANN released these memoranda and gave the community the opportunity to submit questions for Hamilton to consider, the responses to which were also made publicly available. The memoranda concluded that the WHOIS system would have to change in light of the law, responded to community questions about the law, and provided examples of how Registration Data directory services may change to comply with the GDPR.⁷
- 2.4. On 12 January 2018, ICANN published three proposed interim models for compliance and sought community input. The models reflected discussions from across the community and with data protection authorities, legal analyses, as well as the proposed community models received to date.⁸

³ <https://www.icann.org/resources/pages/gtld-registration-dataflow-matrix-2017-07-24-en>

⁴ See <https://www.icann.org/resources/pages/gdpr-legal-analysis-2017-11-17-en>

⁵ <https://www.icann.org/resources/pages/data-protection-meetings-2017-12-08-en>

⁶ <https://www.icann.org/resources/pages/gdpr-legal-analysis-2017-11-17-en#discussions>

⁷ <https://www.icann.org/resources/pages/gdpr-legal-analysis-2017-11-17-en>

⁸ <https://www.icann.org/en/system/files/files/interim-models-gdpr-compliance-12jan18-en.pdf>

- 2.5. The community provided many comments on the three proposed interim compliance models, which are summarized and analyzed in Section 5 of the Interim Model for Compliance with ICANN Agreements and Policies in Relation to the European Union’s General Data Protection Regulation.⁹
- 2.6. Discussions with various parts of the community suggest that there was convergence on key elements, including layered/tiered access for Registration Data; elements of a minimum public Registration Data set; and an accreditation program for access to full Registration Data for users with a legitimate purpose (to be developed in consultation with the Governmental Advisory Committee, data protection authorities and contracted parties with full transparency to the ICANN community). However, there were some competing views on the requirements of the GDPR and a few key elements, namely:
- (i) whether Registrars must continue to collect contact details for administrative and technical contacts; and transfer them to Registry Operators and data escrow providers;
 - (ii) whether email addresses for registrant, administrative, and technical contacts should be displayed in the public Registration Data directory service, or anonymized;
 - (iii) whether the GDPR should be applied narrowly, or expanded in scope because of the extra-territorial application of the GDPR to controllers and processors outside of the EU when their processing activities are related to offering goods or services to data subjects in the EU. This is particularly important due to the global nature of Registry Operators and Registrars and their processing activities.
 - (iv) whether differentiation should be made between legal versus natural persons; and
 - (v) what are the elements of a minimum public Registration Data set that would be published while an accreditation program for layered/tiered access is being developed.
- 2.7. After extensive community consultations, Internet stakeholders broadly agreed on the necessity for, and many elements of, a high-level framework for changes to Registration Data directory services. These included layered/tiered access to non-public WHOIS data, an accreditation program to gain access to non-public WHOIS for legitimate purposes, and a more limited public Registration Data set.
- 2.8. With this input, and feedback received on the three ICANN-proposed models, ICANN published a single model for compliance to be used in the interim period on 8 March 2018.¹⁰ That model is now reflected in the Temporary Specification.
- 2.9. In addition to the dialogues and engagement with the community, ICANN also provided support to community discussions, including a community request at ICANN61 in March 2018 for ICANN to provide secretariat support for a community group discussing a process for

⁹ <https://www.icann.org/en/system/files/files/gdpr-compliance-interim-model-08mar18-en.pdf>

¹⁰ <https://www.icann.org/news/blog/data-protection-privacy-issues-update-more-details-published-on-icann-proposed-interim-model>

providing accredited access to non-public Registration Data for users with a legitimate purpose, as defined by the GDPR.¹¹

3. Steps ICANN has taken to ensure the Temporary Specification complies with the GDPR and addresses other public policy considerations

- 3.1. ICANN has engaged in detailed discussions with European Union data protection authorities including the Article 29 Working Party (WP29), regarding the WHOIS system and the GDPR since 2017.
- 3.2. ICANN and the European Commission have exchanged correspondence on the history of the GDPR and other policies regarding Personal Data, as well as the history of the WHOIS system.¹²
- 3.3. In furtherance to ICANN's request for guidance on the application of the GDPR, the WP29 sent a letter on 6 December 2017 regarding the legal grounds for publication of Registration Data.¹³
- 3.4. In a 29 January 2018 letter, the European Commissioner for Migration, Home Affairs and Citizenship, the Commissioner for Justice, Consumers and Gender Equality, and the Commissioner for the Security Union highlighted the importance of the GAC's 2007 WHOIS Principles¹⁴ and "the corresponding need to preserve WHOIS functionality and access to its information."¹⁵
- 3.5. On 7 February 2018, ICANN received a letter from the European Commission's Directorate-General for Communications Networks, Content and Technology providing technical input on ICANN's Proposed Interim Model.¹⁶
- 3.6. On 12 April 2018, ICANN received a letter from WP29 providing further input on ICANN's Proposed Interim Model.¹⁷
- 3.7. Regular dialogues were also held, and continue to be, with the Governmental Advisory Committee (GAC) during ICANN meetings, and through communications and advice provided by the GAC.

¹¹ <https://www.icann.org/resources/pages/gdpr-legal-analysis-2017-11-17-en#discussions>

¹² <https://www.icann.org/resources/pages/data-protection-correspondence-2017-12-08-en>

¹³ <https://www.icann.org/en/system/files/correspondence/falque-pierrotin-to-chalaby-marby-06Dec17-en.pdf>

¹⁴ <https://gac.icann.org/principles-and-guidelines/public/principles-whois-services.pdf>

¹⁵ <https://www.icann.org/en/system/files/correspondence/avramopoulos-et-al-to-marby-29jan18-en.pdf>

¹⁶ <https://www.icann.org/en/system/files/correspondence/viola-to-marby-07feb18-en.pdf>

¹⁷ <https://www.icann.org/en/system/files/correspondence/jelinek-to-marby-11apr18-en.pdf>

- 3.8. On 10 May 2018, ICANN sent a letter with additional questions for clarification to WP29 Chairperson Andrea Jelinek, following ICANN’s meeting with WP29 representatives on 23 April 2018.¹⁸
 - 3.9. On 16 May 2018, the GAC sent a letter to the ICANN Board requesting that the Board defer a formal rejection of the GAC Advice to allow the GAC time to provide further clarification where possible.¹⁹
 - 3.10. All of these inputs have been carefully considered as part of developing the Temporary Specification.
 - 3.11. ICANN continues to engage with the GAC and WP29, and the ICANN Board may make adjustments to implementation details of the Temporary Specification based on further inputs and guidance from WP29 or the European Data Protection Board, as a result of the Board-GAC Bylaws Consultation, as a result of a court order from a relevant court of competent jurisdiction regarding GDPR, or additional legislation or regulation.
4. How the Temporary Specification has been tailored as narrowly as possible to address the requirements of the GDPR
- 4.1. Consistent with the requirements in the Registry and Registrar Accreditation Agreements for emergency temporary policies, the Temporary Specification has been tailored as narrowly as possible to address the requirements of the GDPR.
 - 4.2. The Temporary Specification includes the following new and modified requirements necessary for compliance with the GDPR:
 - 4.2.1. Data Processing requirements for handling of Personal Data in Registration Data. These requirements need to be incorporated into the Registry and Registrar Accreditation Agreements to ensure that ICANN, Registry Operators, Registrars, Data Escrow Agents, and any other parties handling Personal Data in Registration Data comply with the GDPR.
 - 4.2.2. Layered/tiered access. Layered/tiered access has been identified and supported by European data authorities and various stakeholders as the mechanism for balancing the legitimate interests defined in Section 4 of the Temporary Specification (“Lawfulness and Purposes of Processing gTLD Registration Data”) with the interests, rights, and freedoms of the affected data subject. The tiered/layered access framework for Registration Data directory services implemented in the Temporary Specification is specifically designed to minimize the intrusiveness of data Processing, while still

¹⁸ <https://www.icann.org/en/system/files/correspondence/marby-to-jelinek-10may18-en.pdf>

¹⁹ <https://www.icann.org/en/system/files/correspondence/ismail-to-chalaby-17may18-en.pdf>

permitting necessary Processing. Processing under the tiered/layered access framework also minimizes the risk of unauthorized and unjustified Processing.

- 4.2.3. Data collection requirements. The Temporary Specification maintains current requirements for robust collection of Registration Data (including registrant, administrative, and technical contact information) so that users with a legitimate purpose can continue to have access to this data by requesting access to this Registration Data from Registrars and Registry Operators. Other users would have public access to a minimum set of Registration Data and be able to contact a registrant, administrative, or technical contact through an anonymized email or web form. This approach is designed to minimize the intrusiveness of data Processing, while still providing a means to contact, but not identify, the registrant, administrative, or technical contacts.
- 4.2.4. RDAP. The existing WHOIS protocol is limited in its ability to support layered/tiered access. RDAP implementation is necessary to provide for a robust mechanism to support the layered/tiered access model. Service Level Agreements and reporting for RDAP are also included so as to provide necessary requirements for the system implementation work.
- 4.2.5. Scope of applicability of changes to Registration Data directory services. The Temporary Specification is required to be implemented where required under the GDPR. It also provides limited flexibility to Registry Operators and Registrars to apply the requirements beyond where required by the GDPR when such Registry Operator or Registrar has a commercially reasonable purpose to do so or it is not technically feasible to limit application of the requirements to the European Economic Area (“EEA”). Permitting limited flexibility to implement changes to Registration Data directory services beyond where required under the GDPR is a feature of the Temporary Specification because of the extra-territorial application of the GDPR to controllers and processors outside of the EEA when their processing activities are related to offering goods or services to data subjects in the EEA.

The rationale behind the broadened territorial scope of the GDPR was to ensure the protection of EEA data subjects in cases in which controllers or processors not established in the EU nevertheless address their business activities to EEA data subjects. With regard to the WHOIS system, however, the extra-territorial reach of the GDPR leads to difficulties in determining the exact scope of application of the GDPR. Registrars will hardly want to exclude the EEA from their service offerings. At the same time providing for different rules for processing registrant data is difficult in practice. Also taking into account that an increasing number of countries, for example, in the Asia-Pacific region and in South America have adopted or are in the processing of adopting GDPR-like data protection regimes, adopting GDPR requirements as the global standard for Registration Data processing activities in connection with the WHOIS system may provide for greater uniformity and consistency for these other jurisdictions.

The ability to apply the changes in the Temporary Specification beyond the European Economic Area also recognizes that not allowing for such a feature could potentially put Registry Operators and Registrars not established in the European Economic Area at a competitive disadvantage if they do not have the option to apply the model on a global basis. Furthermore, it may be difficult in practice only to apply the changes to collection and Processing linked to the European Economic Area depending upon how an individual Registry Operator or Registrar has set up its systems.

- 4.2.6. Registrations of legal and natural persons. The Temporary Specification applies to all registrations, without requiring Registrars and Registry Operators to differentiate between registrations of legal and natural persons. This is consistent with existing requirements which do not require Registrars and Registry Operators to distinguish between various types of registrants. It may be difficult to draw a clear line between Personal Data relating to natural or to legal persons, for example, in case of natural persons with such a close financial, personal or commercial entanglement with the legal person so that information about the legal person can be related to such natural persons (e.g., in case of a sole proprietorship or a GmbH owned by one person). Also, while it is true that the GDPR does not protect data pertaining to legal persons, the registrations of legal persons may include personal data of natural persons. Also, it may be difficult in practice to check millions of registration records and distinguish between registrations of legal and natural persons. Considering these points, the requirements in the Temporary Specification apply to all domain name registration Personal Data.
- 4.2.7. Maintaining the existing ICANN policies and procedures. The GDPR impacts a number of existing ICANN policies and procedures. To the extent possible, the Temporary Specification has been tailored as narrowly as possible to allow the continued operation of these existing policies and procedures. In a few instances, modifications to some of these existing policies and procedures were necessary, including the Transfer Policy, Uniform Rapid Suspension (URS) Technical Requirements, and Uniform Domain Name Dispute Resolution Policy Rules (UDRP Rules), Bulk Registration Data Access (BRDA), and Registration Data search capabilities. The modifications were limited to (1) ensuring continued access to the full Registration Data for purposes of the URS and UDRP, which are protection mechanisms for trademark holders against abusive registrations; (2) minimal adjustments to the Transfer Policy to ensure that Registered Name Holders can continue to transfer their domain names to other Registrars absent registrant and administrative contact's contact information in the public Registration Data directory; (3) clarifying the requirement of bulk Registration Data transfer to ICANN to meet the GDPR minimization principle; and (4) requiring Registrars and Registry Operators to comply with the requirements for access to Personal Data in Registration Data where Registration Data search capability is offered.

- 4.3. This Advisory also incorporates by reference the additional legal analysis of elements in the [Interim GDPR Compliance Model \(Cookbook\)](#), upon which the Temporary Specification was built.