

Mr. Mike Zupke, Registrar Director Service ICANN,  
Dr. Steve Crocker, Chair, ICANN Board  
Mr. Fadi Chehadé, President & CEO, ICANN  
Mr. Allen Grogan, Chief Contract Compliance Officer ICANN,

October 30, 2015

Dear Sirs,

We are glad that data privacy protection and its implications for the domain name industry are now central on ICANN's agenda.

As informally discussed with several members of the GDD department in the past, European based registrars have always been conscious of the legal consequences stemming from the transfer of personal data of their customers outside the European Economical Area. While these concerns were more of a theoretical nature, a recent justice decision has transformed this concern to a pressing issue that may not bear with ICANN regular pace.

Indeed, the European Court of Justice has rendered a decision on October 6, 2015 which invalidated the 2000 Safe Harbour Principles which allowed US companies to comply with EU laws when processing personal data<sup>1</sup>.

This invalidation has for direct consequence to render transfers of private data from European based Registrars to entities established within the United States of America illegal, if the latter did not agree to enter into an agreement including a set of clauses developed by the European Commission.

As such, the daily transfers that numerous EU based registrars are currently operating to Iron Mountain Inc. within the scope of the Registrar Data Escrow program<sup>2</sup>, are operated in breach of Directive 95/46/EC and its transposition under national laws.

Fortunately, the Article 29 working party - which is composed of representatives from every national data protection agency in the EU - released a communiqué stating that the national data protection agencies would only enforce this decision starting from January 2016<sup>3</sup>.

As a reminder, a breach of such laws is considered a felony and punished by imprisonment and heavy fines.

Time is therefore of the essence.

Whilst ICANN has approved other RDE service providers than Iron Mountain, some of those established within the European Economic Area, the service fees of those providers are not being supported by ICANN. Thus, the only solution for EU based registrars to comply with their local laws is to support this extra cost.

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<sup>1</sup> <http://curia.europa.eu/juris/documents.jsf?num=C-362/14>

<sup>2</sup> <https://www.icann.org/en/system/files/files/rde-specs-09nov07-en.pdf>

<sup>3</sup> [http://ec.europa.eu/justice/data-protection/article-29/press-material/press-release/art29\\_press\\_material/2015/20151016\\_wp29\\_statement\\_on\\_schrems\\_judgement.pdf](http://ec.europa.eu/justice/data-protection/article-29/press-material/press-release/art29_press_material/2015/20151016_wp29_statement_on_schrems_judgement.pdf)

We are sure, you will agree this clearly constitutes an unfair disadvantage to a given category of a registrars.

This is why we ask ICANN to offer the same terms as it currently does to Iron Mountain to other RDE providers established in the European Economical Area to ensure a level playing field for registrars globally. Please bear in mind that operating a change of RDE provider will require certain technical adaptation and development from registrars and as such your timely action is highly appreciated.

Thank you,

Signatories

EuroDNS S.A., Luc Seufer  
NetEarth One Inc., Chris Pelling  
Astutium Ltd, Rob Golding  
ingenit GmbH & Co.KG, Thomas Klute  
Key-Systems GmbH, Alexander Siffrin  
Blacknight Solutions Inc. Michele Neylon,  
Realtime Register B.V, Theo Geurts  
Safebrands SAS, Frederic Guillemaut  
Mesh Digital Limited, Pete Osmond  
Paragon Internet Group Ltd, Dan Rodgers  
Hostserver GmbH, Marcus Schäfer  
1API GmbH, Robbie Birkner,  
One.com A/S, Rieke Poppe  
RegistryGate GmbH, Fritz Diekmann  
1&1 Internet AG, Thomas Keller  
Hosting Concepts B.V., Arno Vis  
united-domains AG, Tobias Sattler  
Nordreg AB, Benny  
CorehubS.R.L., Iliya Bazlyankov  
Netistrar Ltd, Andrew Bennett  
Cronon AG, Michael Shohat