

25 January 2019

Mr. William Debeuckelaere, President  
Belgium Data Protection Authority

CC: European Data Protection Board

Re: Information regarding ICANN, WHOIS and Cross-Border Transfers

Dear Mr. Debeuckelaere:

Thank you for your letter of 15 January 2019 in response to the [information](#)<sup>1</sup> ICANN provided regarding the data processing activities of its Contractual Compliance department and compliance with the European Union's General Data Protection Regulation (GDPR). ICANN appreciates our dialogue and continues to assess your guidance and feedback to help outline our steps moving forward as it relates to compliance with the GDPR.

As ICANN is analyzing your guidance, I thought it might be helpful to give some additional details beyond what I provided in a 9 August 2018 [letter](#) about ICANN and its global operations as well as the WHOIS system.<sup>2</sup> To note, ICANN does not operate a central WHOIS database in Brussels or elsewhere. I hope that this information will provide additional clarity about cross-border processing of personal data carried out by ICANN and in particular the role of ICANN's regional office in Brussels.

### **ICANN and Consensus Policy Development**

ICANN achieves its mission through implementation of policies approved by its Board of Directors. These policies start out as recommendations formed and refined by the global ICANN community through its Supporting Organizations and influenced by Advisory Committees, which includes members of ICANN's Governmental Advisory Committee (GAC). The GAC is made up of more than 170 representatives of national governments, multinational governmental organizations and treaty organizations, or public authorities from around the world, including EU member states and the European Commission. The global ICANN community, with volunteers from across the world, develop policies in a "bottom-up," multistakeholder, open and transparent process. Volunteer policy development working groups form around an issue and consider it from all angles, making decisions by consensus wherever possible.

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<sup>1</sup> <https://www.icann.org/en/system/files/correspondence/marby-to-debeuckelaere-dixon-06dec18-en.pdf>

<sup>2</sup> <https://www.icann.org/en/system/files/correspondence/marby-to-debeuckelaere-09aug18-en.pdf>

Currently, the ICANN community is working to develop a new policy to address WHOIS requirements in ICANN's agreements with registries and registrars in light of changes in data protection/privacy regulations globally, including the GDPR. This new policy is poised to replace the temporary mechanism put in place by the ICANN Board to comply with ICANN requirements concerning WHOIS in light of the GDPR.

## **What is WHOIS?**

WHOIS is a global, publicly available distributed repository of information, known as registration data, that provides technical information and contact information about the registration records of more than 187 million domain names. This means that there's not one, centrally-managed database of registration data. Rather, registration data is held in disparate locations and administered by multiple registries and registrars who each set their own conventions for the WHOIS service. For gTLDs, this means that each of the 2,500+ domain name registries and registrars operate individual databases of registration data. The minimum requirements for WHOIS for these gTLD domain name registries and registrars are established in their contracts with ICANN.

WHOIS 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. Maintaining public access to accurate, complete, and up-to-date registration data on resources used on the Internet facilitates efforts to identify and mitigate issues that can impact the proper operation of the network.

## **ICANN has a coordination role rooted in the public interest with respect to WHOIS**

ICANN plays a coordinating role with respect to WHOIS. As noted above, there is not one central WHOIS database, and ICANN's coordination happens through its private contractual arrangements with the more than 2,500 domain name registries and registrars, each of which, along with ICANN, are data controllers impacted by the GDPR. ICANN's ability to require registries and registrars to operate WHOIS services to serve the global public interest is rooted in its contracts and community-developed policies.

The WHOIS system is an important part of ICANN's mission and mandate, and responsibilities relating to the WHOIS system are encapsulated in ICANN's Bylaws. 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 [...]". Article 1, section 1.2(a) of ICANN's Bylaws requires that "ICANN must operate in a manner consistent with these Bylaws for the benefit of the Internet community as a whole [...]". Operating a WHOIS service for many registries and registrars is a cost-center. Unlike ICANN, which is a non-profit corporation required to operate for the benefit of the Internet community as a whole in line with our mission, most registries and registrars are for-profit entities and were not purposefully created to operate for the benefit of the global Internet community.

## ICANN's Regional Office in Brussels

### *The Belgian DPA as Lead Supervisory Authority*

As noted in our 9 August 2018 letter, ICANN is a non-governmental non-profit organization and has five regional offices: Los Angeles (headquarters), Brussels, Istanbul, Montevideo, and Singapore. The Brussels regional office is not responsible for decisions regarding the WHOIS system and is not involved in any cross-border processing activities related to gTLD data processing.

We take due note of the Belgian DPA's explanation of its view and role as the lead supervisory authority. Yet, we would like to clarify that the Irish Supervisory Authority was included in our letter of 6 December 2018 as part of an ongoing discussion with that authority following the action brought by the Irish domain name registrar.

Given ICANN's coordination role through existing private contractual arrangements with more than 2,500 domain name registries and registrars located in various European jurisdictions and throughout the world, ICANN may have to start or continue dialogues with other supervisory authorities, e.g., when registries and registrars take actions to their respective lead supervisory authorities.

We would like to let you know that regardless of the question of the competent supervisory authority, ICANN may not refuse to respond to queries from public authorities such as supervisory authorities. ICANN will therefore also have to include other relevant European supervisory authorities in a dialogue when ICANN is responding to issues concerning its contracted parties.

With regard to the WHOIS system, it is important to acknowledge that data processing related decisions regarding this system are not necessarily ICANN organization decisions and, when they are, are not made by the ICANN Board or the ICANN organization following a top-down approach but rather emerge from the bottom-up, open and transparent discussion process involving a global community comprising of various stakeholders as described above.

### *Cross-Border Transfers*

ICANN takes note of the provisional and informal view taken by the Belgian supervisory authority (based on information available to date) that the GDPR does not stipulate that appropriate safeguards are not necessary in the case where the GDPR is directly applicable to the recipient of the data. ICANN will further consider this position in the light of the current<sup>3</sup> and future positions or views of other European supervisory authorities and the upcoming final version of the European Data Protection Board guidelines on the scope of the

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<sup>3</sup> See, for example, <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/international-transfers/>

GDPR. Based on the further assessments, ICANN may consider requesting further clarifications from the Belgian supervisory authority.

This letter is sent without any adverse recognition.

Sincerely,



Göran Marby  
President and Chief Executive Officer  
Internet Corporation for Assigned Names and Numbers (ICANN)