

7-September-2018

Goran Marby, President and CEO  
Internet Corporation for Assigned Names and Numbers  
Via email: [goran.marby@icann.org](mailto:goran.marby@icann.org)

Re: Steps Toward Implementing an Accreditation and Access Model

Dear Mr. Marby:

The Business and Intellectual Property Constituencies (BC and IPC) write regarding next steps toward implementing a model that will provide access to non-public WHOIS data for authenticated users.

The BC and IPC thank ICANN Org for beginning the discussion about providing a unified access solution for non-public Whois data for lawful and legitimate purposes, and for acknowledging the harms that many in the community are facing without a unified access model in place. While we appreciate that ICANN Org has introduced a [draft access framework](#) for discussion, the need for access has become more acute since May 25 and necessitates rapid action. We therefore write today to ask that ICANN act in the public interest to publish a much-needed temporary unified access solution for security, law enforcement, consumer protection and intellectual property needs, while the community works diligently to develop a permanent solution via the EPDP.

ICANN Org is aware of the need to quickly produce a credible unified access model. Access has long been identified by parties within and outside the ICANN community as a necessary element of the post-General Data Protection Regulation (GDPR) evolution of WHOIS:

- The Governmental Advisory Committee, in its [Abu Dhabi](#), [San Juan](#) and [Panama City](#) communiqués, advised the ICANN Board to, as quickly as possible, ensure development and implementation of an access model.
- The previously-titled Article 29 Working Party [encouraged](#) ICANN “to develop appropriate policies and procedures applicable to incidental and systematic requests for access to WHOIS data, in particular for access by law enforcement entities.”
- The Security and Stability Advisory Committee, in [SAC 101](#), recommended that the ICANN Board “should support the creation of an accredited RDDS access program, with the ICANN Organization ensuring the creation, support of, and oversight of the supporting technical access mechanism.”

Similar calls have emanated from other parts of the community as well. We ask ICANN to prioritize this matter, including facilitation of a detailed community process to move the model for access forward, set developmental milestones and a timeline for reaching agreement, and adopt an implementation strategy.

The BC and IPC have been sympathetic to ICANN Org’s reluctance to act without reassuring guidance from the EDPB that a unified access model is permissible. However, we feel that per their July 5, 2018 letter, it is clear that a unified access model should be permissible with appropriate safeguards and assurances. In this most recent [letter](#), the EDPB also stressed that “The responsibility for designing a model that will provide this [compliance] assurance is in first instance up to ICANN...”

We therefore concur with those in the community who believe concrete steps to move forward toward a reasonable unified access model are overdue. ICANN is in a position to build on the community’s work to date and issue a temporary specification mandating the implementation of an interim unified access model, and we call on the Board to do so.

Finally, in his [blog post](#) of 13 July, ICANN General Counsel John Jeffrey noted the EDPB’s statement regarding registration data of legal persons. In light of this clarification, we request the Board revisit the natural/legal person distinction in any adjustments to the Temporary Specification, congruent with ICANN’s commitment to maintain WHOIS to the greatest extent possible while still complying with the requirements of the GDPR, as applicable.

We look forward to your reply regarding these important issues.

Sincerely,

ICANN Business Constituency  
ICANN Intellectual Property Constituency