



15 January 2018

Isabelle Falque-Pierrotin  
Chairwoman, Article 29 Data Protection Working Party

Re: Reply to the 6 Dec. Article 29 Working Party letter

Dear Ms. Falque-Pierrotin:

Thank you for your letter, dated 6 December 2017, which has been posted to the ICANN Correspondence [page](#). We appreciate your letter on the application of data protection and privacy laws to the WHOIS services. Additionally, we welcome your invitation to enter into a dialogue together on how to ensure compliance of the WHOIS services with current European Union (EU) data protection law and the upcoming EU General Data Protection Regulation (GDPR). We believe such a dialogue would provide us with meaningful and timely exchange on the important issues related to this regulation.

ICANN notes your concern about the timing for finding a common solution to addressing compliance with the GDPR. We also note that ICANN has long been engaged in discussions about overhauling the WHOIS services. The ICANN community, through its policy development process, is working to develop the first comprehensive registration data and directory services policy. The [Generic Names Supporting Organization's gTLD Registration Directory Services Policy Development Procedure \(RDS PDP\)](#) Working Group in January 2016 began to address what a next generation system will look like, including how such a system may address data protection and privacy laws. This followed several years of discussion among the community, ICANN's Board of Directors and an Expert Working Group, which proposed in June 2014 a process framework for structuring just such a Policy Development Process.

As you know, ICANN org has engaged Hamilton Advokatbyrå, a European law firm, to assist in our analysis of the GDPR's impact on gTLD registration directory services. The analyses produced by Hamilton are meant to assist ICANN and its contracted parties as it determines how best to comply with the law. A recently published [third memorandum](#) in a series on the topic notes how processing data within the scope of WHOIS could possibly be changed to become compliant with the GDPR. In this memorandum, Hamilton addresses the legality of consent with regard to personal data, acknowledges Article 29's recent communication, and discusses the concept of a layered access model.

On 12 Jan. 2018, we [published](#) for public review three proposed models for altering the WHOIS services to ensure compliance with the GDPR, as well as with ICANN's contracts. These models draw on feedback received from the community, including communications from the Article 29 Working Party, as well as the legal analyses we've published to date. We invite your input on these models, as well.

In addition, we welcome the opportunity to continue to engage in dialogue together with our stakeholders to discuss these issues, including possible ways to address them. In particular, we would like to invite you to join us in the public discussion on this topic at the ICANN61 meeting taking place on 10-15 March 2018 in San Juan, Puerto Rico. Your involvement and contributions would be most welcome in a forum with all of ICANN's global community members and stakeholders. We can provide remote access for you to join the relevant community session if you cannot be there in person. In parallel, ICANN org will continue to work with the community and keep it apprised of the GDPR discussions with regular updates to ICANN's [data protection/privacy webpage](#), as well as its regular meetings.

In closing, we look forward to remaining engaged with the Article 29 Working Party during these important discussions.

Sincerely,



Göran Marby  
President and CEO, ICANN