

Contracted Parties' Initial Feedback to the BC/IPC "Accreditation & Access Model for Non-Public WHOIS Data"

April 13, 2018

The Contracted Parties House GDPR Discussion Group submits the following comments on the BC/IPC's proposed model for a centralized accreditation system for access to non-public WHOIS data. These comments represent initial feedback from Discussion Group members and do not preclude additional comments from individual contracted parties. While we recognize the effort that has gone into this proposal, we note that the model leaves many substantial issues unresolved, and we are not able to support this approach as a viable option as currently written. We strongly caution against trying to rush through the critical issues that must be addressed for any proposal to become a workable path toward a centralized accreditation system.

We also want to highlight that the BC/IPC Model is drafted by a subset of ICANN community members, and as such should not be considered to reflect the views and inputs of the broader community.

- **Vetting of Accredited Parties:** In order for contracted parties to fully assess the viability of a centralized accreditation model, we will require additional detail around which organizations can realistically serve as accrediting bodies, how a given party is determined to be eligible for accreditation, and the criteria by which those parties and their respective credentials are evaluated by the accreditor. As a starting point, contracted parties believe that in the case of Intellectual Property rights holders, simply demonstrating ownership of a trademark registration or copyright is not sufficient to qualify that party to access non-public WHOIS data and that additional credentials, along with a specific and valid purpose, will likely be necessary. Furthermore, contracted parties will also need to be able to ascertain which users become accredited, and which users access which data and for what purposes – thus making a system that allows user groups to share credentials very difficult to adopt. Where possible, the accreditation process should leverage existing, reliable and independent databases and be directly tied to particular assertions of legitimate interests. Other groups within ICANN have also noted additional concerns with the BC/IPC Model that would need attention.
- **Access to Data Once a Party is Accredited:** The BC/IPC Model stipulates that any accredited user may have access to all WHOIS records from any ICANN contracted party. This level of unlimited access raises significant concerns with regard to the data minimization principle of the GDPR and the principle that processing (including disclosure) of personal data should be limited to that which is required to meet a specific and legitimate purpose. Access to each data element must have a legitimate basis, and must appropriately balance that basis against the data subject's fundamental right to privacy. Given these complexities, contracted parties encourage the authors to consider the ways in which the to-be-accredited parties use WHOIS information and whether those uses can be served by a subset of the data, by anonymized data, or through means other than the WHOIS.

- **Monitoring and Responding to Misuse of Data:** The BC/IPC Model provides some detail as to what constitutes a misuse of the non-public WHOIS data and penalties against such misuse. However, contracted parties are concerned by the lack of detail as to how such misuse will be identified and monitored, beyond just providing an abuse reporting mechanism. In order to minimize the liability to which contracted parties may be exposed, we believe more proactive monitoring – and subsequent enforcement – of data misuse is necessary. In all cases, the decision to revoke or suspend credentials and/or access to non-public WHOIS data must reside with the applicable contracted party. Further, contracted parties reserve the right to report users who abuse the data to the appropriate Data Protection Authorities for investigation, and should have the right to invoke penalties in cases of misuse.
- **Purpose Statement:** Contracted parties are concerned that the Purpose Statement for the Collection and Processing of WHOIS Data included in the Model is overly broad and veers into the territory of simply listing the numerous existing *status quo* uses of WHOIS data. Per Art. 5 (1) (b) of the GDPR, “Personal data shall be collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes.” Understanding that the initial purpose of collecting registration data is in the service of a contract between the registrant and the registrar (or reseller) to provision the domain registration and enable its resolution in the DNS, purposes for further processing/disclosing that registration data would constitute an additional use and would need to be compatible with that purpose.
- **Process Flow:** Recognizing that the BC/IPC Model is a work in progress, the contracted parties note that there are numerous logistical and implementation-related questions raised by the document that will need to be answered in order to make any kind of centralized accreditation system possible. Specifically, the process flow around how credentials are not only issued but later authenticated at different access points will require additional detail.