**Summary of various Article 29 documents and related materials**

***Working Party on the Protection of Individuals with regard to the Processing of Personal Data, Recommendation 2/97, Report and Guidance by the International Working Group on Data Protection in Telecommunications (“Budapest – Berlin Memorandum on Data Protection and Privacy on the Internet”) Adopted 3 Dec. 1997, available at*** [***Article 29 WP 5 Recommendation 2/97***](http://ec.europa.eu/justice/data-protection/article-29/documentation/opinion-recommendation/files/1997/wp5_en.pdf)

The Working Party found that the “Budapest – Berlin Memorandum on Data Protection and Privacy on the Internet” might contribute to the improvement of the protection of fundamental rights of individual, in particular their privacy, on a worldwide basis.

***Article 29 Data Protection Working Party, Opinion 5/2000 on the Use of Public Directories for Review of Multi-Criteria Searching Services (Reverse Directories) Adopted 13 July 2000, available at*** [***Article 29 WP 33 Opinion 5/2000***](http://ec.europa.eu/justice/data-protection/article-29/documentation/opinion-recommendation/files/2000/wp33_en.pdf)

Reverse or multi-criteria searches of public directories are lawful if the following conditions are met:

1. subscriber provides specific and informed consent prior of the inclusion of his data in all kinds of public directories (telephony, email, etc.) used for reserve or multi-channel services;
2. the controller informs the subscriber in particular about the use of personal data in alphabetical directories, whether his personal data are planned to be used in reverse or multi-channel services and to what extent, his right to modify his decision to allow each specific data processing; and
3. the controller has implemented technical and organizational measures appropriate to the risks represented by the processing and the nature of the data protected (i.e. protect against fraudulent use).

***Article 29 Data Protection Working Party, Opinion 4/2001 on the Council of Europe’s Draft Convention on Cyber-crime, Adopted 22 March, 2001, available at*** [***Article 29 WP 41***](http://ec.europa.eu/justice/data-protection/article-29/documentation/opinion-recommendation/files/2001/wp41_en.pdf)[***Opinion 4/2001***](http://ec.europa.eu/justice/data-protection/article-29/documentation/opinion-recommendation/files/2001/wp41_en.pdf)

The Working Party recommended that the Council of Europe, in promoting international cooperation in matters of cybercrime outside of its own membership, should pay attention to the protection of fundamental rights and freedoms, especially the right to privacy and personal data protection. It offered various specific recommendations to the draft convention noted above.

***Article 29 – Data Protection Working Party, Working Document on Determining the International Applications of EU Data Protection Law to Personal Data Processing on the Internet by non-EU based Web Sites, Adopted 30 May 2002, available at*** [***Article 29 WP 56 Working Document 5/2002***](http://ec.europa.eu/justice/data-protection/article-29/documentation/opinion-recommendation/files/2002/wp56_en.pdf)

The purpose of this document was to discuss international application of EU data protection laws to the processing, particularly collection, of personal data by non-EU based web sites. The Working Party opined that:

1. a high level of protection for individuals can only be ensure if web sites established outside of the EU but using equipment in the EU respect the guarantees of personal data processing and the rights of individuals recognized at the EU level and applicable to all websites established in the EU.
2. A program for the promotion of European data protection rules in a pragmatic way would help controllers in third countries better understand, implement and demonstrate privacy compliance.

***Declaration of the Committee of Ministers on ICANN, Human Rights, and the Law, Adopted by the Committee of Ministers on 3 June 2015, available at*** [***Declaration of Committee of Ministers on ICANN, human rights and the rule of law***](https://wcd.coe.int/ViewDoc.jsp?Ref=Decl%2803.06.2015%292) ***(3 June 2015)***

Among other things, this declaration states that:

1. The Internet should be managed in the public interest.
2. Member states have a primary legal and political obligation to protect human rights as enshrined in the European Convention on Human Rights (ETS No. 5).
3. Member states have the obligation to protect society and individuals against crime and to uphold the rule of law on the Internet.
4. ICANN should respect international human rights law. ICANN should ensure, when defining access and use of new gTLDs, that an appropriate balance is struck between economic interests and other objectives of common interest.
5. Member states, through their GAC representatives, play an important role in ensuring that ICANN’s technical decisions take full account of international law and other public policy objectives. They should continue to engage with ICANN to ensure it assumes responsibility for respecting internationally recognized human rights laws and standards.

***Letter from Jacob Kohnstamm, Article 29 Data Protection Working Party, to Messrs. Crocker and Chehade, ICANN, dated 6 June 2013***

The Working Party objected to a proposal for registrars to maintain certain personal data beyond a contract term, noting that in light of the diversity of registrars in terms of size and security measures, the benefits of maintain data for a lengthy period post-contract was disproportionate to risk for individuals and their rights to the protection of their personal data.

***Letter from John Jeffrey, ICANN to Jacob Kohnstamm, Article 29 Data Protection Working Party, dated 20 Sept. 2013***

ICANN noted that the 2013 RAA was supported by the GAC, that in its final form reduced the retention requirements from a prior proposal, created a dual-tiered system to data retention, and that there are legitimate reasons for maintaining data, such as for billing related matters, beyond law enforcement purposes. ICANN invited a discussion with the Working Party on a replacement whois system.

***Letter from Jacob Kohnstamm, Article 29 Data Protection Working Party, to John Jeffrey, ICANN, dated 8 January 2014***

The Working Party stated that the 2013 RAA did not address the concerns described in their 6 June 2013 letter, and regretted that ICANN did not acknowledge the Working Party correspondence as written guidance to support the waiver application of a registrar operating in Europe. The Working Party reiterated its concern that the 2013 RAA fails to specify a legitimate purpose which is compatible with the purpose for which the data was collected and for the retention of the data for the relevant periods.

***Letter from Cyrus Namazi, ICANN to Jacob Kohnstamm, Article 29 Data Protection Working Party, dated 25 March 2014***

ICANN noted that in its examination of various registrar waiver requests from the 2013 data retention requirements, it had learned that Member States of the EU may have differing interpretations of what is a “legitimate” purples in determining the length of time for which data may be lawfully retained. ICANN stated that it had started a public comment process to clarify the lawful and legitimate purposes for data collection and retention under the RAA, and was hopeful that this would help inform ICANN and find an acceptable resolution.