

14 May 2018

Administration of Domain Name Disputes in relation to the General Data Protection Regulation

Dear Members of the GNSO Council:

We write in our capacity as Co-Chairs of the GNSO Policy Development Process Working Group (WG) reviewing all rights protection mechanisms in all gTLDs.

Like others in the ICANN community, our WG is closely following the ongoing discussion regarding WHOIS data accessibility as it relates to the General Data Protection Regulation (GDPR). We understand that ICANN is working with community members to expeditiously finalize its *Interim Model for Compliance with ICANN Agreements and Policies in Relation to the European Union's General Data Protection Regulation*.

We write to inform the Council – as possible stewards of an expedited GDPR-related policy process – of the need for Whois data to facilitate the fair and efficient administration of Uniform Domain Name Dispute Resolution Policy (UDRP) and Uniform Rapid Suspension (URS) cases.

To meet due process standards in UDRP and URS cases, the relevant dispute resolution providers must communicate with the domain name registrant/respondent based upon email, postal, and facsimile information found in the “Whois database for the registered domain-name holder”. It is particularly important that access to this data remain available between the GDPR coming into force on May 25, 2018 and further expected guidance from ICANN on this topic (which may include it being addressed in an anticipated “accreditation and access” model).

In this respect we are pleased to see that the draft Temporary Specification published by the ICANN organization on 11 May 2018, and updated on 14 May, expressly acknowledges that coordinating dispute resolution services for certain disputes concerning domain names is a legitimate purpose for the processing of Whois data, and that the other models being discussed with the community (such as the ECO Playbook, and the IPC/BC Accreditation & Access model) specifically recognize that UDRP and URS dispute resolution providers meet the GDPR's Article 6(1)(f) “legitimate purposes” and Article 6(1)(b) “performance of a contract” criteria, such that registries and/or registrars, as the case may be, can and should provide such dispute resolution providers with access to Whois data.

Attached you will find a chart prepared at our request by ICANN staff supporting our WG that references relevant provisions of the UDRP Policy and Rules, and the URS Procedure and Rules, that directly or indirectly reference access to and use of registrant data and the Whois database.

We hope you find this background information useful and will be pleased to respond to any questions on this subject.

Sincerely,

Philip S. Corwin (WG co-chair)
Kathryn A. Kleiman (WG co-chair)
Brian Beckham (provisional WG co-chair)

cc: RySG
RrSG
ICANN
ECO
BC/IPC