

QUESTIONNAIRE

Responses must be transmitted via email to; ccwg-acctws2.jurisdiction.questionnaire@icann.org

1. Has your business, your privacy or your ability to use or purchase domain name-related services been affected by ICANN's jurisdiction* in any way?

If the answer is Yes, please describe specific cases, situations or incidents, including the date, the parties involved, and links to any relevant documents. Please note that "affected" may refer to positive and/or negative effects.

Yes.

1. Application of the EU legislation on the protection of personal data to WHOIS Directories.

The European Commission has received several complaints from EU citizens, pointing out to the potential violation of their right to protection of personal data under EU law (Directive 95/46/EC, to be replaced by Regulation 2016/679¹ on 25 May 2018), in relation to processing of personal data by the WHOIS database, including publishing personal data by registrars.

The most recent case we have is from February 2017, when we received an email from a European citizen working from home as a freelance photographer expressing concerns as to the protection of her right to data protection, given that her street address was displayed publicly in the WHOIS database.

The problem is not new. A letter on this matter was sent to ICANN by Article 29 Data Protection Working Party (composed of national supervisory authorities) already on 26 November 2012. This letter highlighted in particular:

"Because there is no legitimate purpose, and in connection with that, no legal ground for the data processing, the proposed data retention requirement is unlawful in Europe. Since the registrars (both within Europe and worldwide to the extent they are processing personal data from EU citizens) are data controllers (responsible for the collection and processing of personal data), the Working Party is concerned that this new obligation will put them in the uncomfortable position of violating European data protection law."

[full letter provided in attachment].

The European Commission, the Article 29 Working Party and the European Data Protection Supervisor are further discussing the application of the EU data protection legislation to the WHOIS directories.

Regulation 2016/679 will also apply to controllers and processors from third countries offering goods or services or monitoring the behaviour of individuals in the EU.

2. Application of EU legislation on the protection of geographical indications to the new gTLD programme.

We have also had conflicts of jurisdiction in the context of the new gTLD programme, with inconsistencies with EU legislation on the protection of geographical indications (GI)

¹ Regulation 2016/679 on the protection of natural persons with regard to processing of personal data on the free movement of such data

concerning .wine and .vin. Fortunately, after long and protracted discussions and CEP (Cooperative Engagement Process) a satisfactory solution for the Parties was finally found in this particular case, in order to avoid consumer deception and misappropriation risks, and to protect European Union and national laws (including those applicable to other jurisdictions).

The Commission tried to find a solution which respects the legitimate interests of the European wine sector by supporting direct negotiations between rights holders of GI and the applicants of .wine and .vin. Global wine organisations, with the support of the Commission, provided a global list of GI names to ICANN, including EU GI names included in the e-Bacchus list, so that those are given special protection.

Following over one year of discussions between all parties involved, sufficient progress was made on the introduction of adequate criteria to protect wine producers around the world and global consumers who might wish to use the dot.wine and/or dot.vin top level domain names.

2. Has ICANN's jurisdiction* affected any dispute resolution process or litigation related to domain names you have been involved in?

If the answer is Yes, please describe specific cases, situations or incidents, including the date, the parties involved, and links to any relevant documents. Please note that "affected" may refer to positive and/or negative effects.

3. Do you have copies of and/or links to any verifiable reports of experiences of other parties that would be responsive to the questions above? *If the answer is yes, please provide these copies and/or links.*

4 a. Are you aware of any material, documented instance(s) where ICANN has been unable to pursue its Mission because of its jurisdiction?* *If so, please provide documentation.*

b. Are you aware of and able to document the existence of an alternative jurisdiction where ICANN would not be so prevented from pursuing its Mission? *If so, please provide documentation.*

While the European Commission is not in a position to document the existence of alternative jurisdictions where ICANN would not be prevented from pursuing its Mission, we are aware that ICANN, over the course of several years, has been investing a significant amount of work, time and resources investigating this issue. It would be useful to know the outcome (if any) of this work and therefore we would welcome an exhaustive ICANN report on its activities in this regard.