

To: Goran Marby, President and CEO, Internet Corporation for Assigned Names and Numbers (ICANN)
Cherine Chalaby, Chair, Board of Directors, ICANN
Daniel Halloran, Chief Data Protection Officer, ICANN

Copy to: Jamie Hedlund, SVP, Contractual Compliance & Consumer Safeguards, ICANN

From: the Registrar Stakeholder Group

Dear Goran, Cherine and Daniel:

On behalf of the Registrar Stakeholder Group, I write to bring to your attention our concerns over our interactions with ICANN Contractual Compliance department, especially with regard to processing of personal data in the post General Data Protection Regulation (“GDPR”) environment.

After nearly two years of communications with ICANN surrounding the implications of GDPR, it is our view that there are substantial gaps between our contracts with ICANN (namely, the Registrar Accreditation Agreement or the RAA), the Temporary Specification and the law. However, we understand that ICANN is undergoing/ has undergone an external review to ensure its compliance with the GDPR and we respectfully request that the concerns and questions raised in this letter be addressed.

Following multiple attempts to receive an answer to the below inquiries from ICANN Contractual Compliance or have Contractual Compliance staff attend the RrSG Compliance Sub-group meeting, we were asked to formalize our questions in writing — hence this letter. We find these experiences counter-productive and frustrating. As parties to the RAA, registrars and ICANN have been able to work together as partners for years to find solutions to a variety of problems. We recognize that there are many larger GDPR questions that require the community to work towards their resolution, and we are supportive and committed to that process. However, that community-wide activity should not prevent us from working together as partners to resolve the specific, compliance related questions below.

Questions regarding ICANN Contractual Compliance and data transfer:

Processing of personal data for ICANN Contractual Compliance activities is only briefly mentioned within the Temporary Specification (see Sections 4.4.13 and 5.7 and Appendix C). We are of the view that there should have been a separate and more thorough analysis addressing this issue, especially on data transfer. Even a provisional position from ICANN elaborating ICANN’s assertion of legitimate purpose would have been a welcome starting point.

According to Appendix C of the Temporary Specification, ICANN org is designated as a data controller in the context of transfer of Registration Data from registrars to ICANN Contractual Compliance. Thus, we would like to know when ICANN plans to provide us with a data processing agreement or any other contractual instrument, as required by Article 28.3 of the GDPR.

While the following will most certainly be answered by the content of a data processing agreement between ICANN and registrars, we would nonetheless appreciate a detailed reply to them.

1. On what grounds does ICANN believe it can lawfully gain access to personal data entrusted by the registrants to their registrars?

Based on our past experiences, we note ICANN Contractual Compliance processes compliance complaints and sends notices or inquiries to registrars using standard templates with overly broad data request, regardless of the specificity of an individual complaint. This approach seems inconsistent with data minimization principle enshrined in the GDPR. While we can easily fathom that certain third parties may qualify as having a legitimate interest to access such data under the GDPR, we would appreciate that ICANN detail the grounds on which it, too, can gain such access. Please be specific, including the authority for each category of personal data typically requested, why it is necessary for processing the typical complaint, and the section of the RAA or ICANN consensus policy that conveys authority both for processing the personal data and for processing the complaint.

2. How does ICANN plan to provide sufficient guarantees to implement appropriate technical and organizational measures in such a manner that processing will meet the GDPR requirements and ensure the protection of the rights of the data subjects?

3. How does ICANN intend to ensure that processing of personal data that is subject to the GDPR will not be transferred outside the European Economic Area (“EEA”) ? To this regard, we note that the only office ICANN has in the EEA or in a country offering guarantees ensuring an adequate level of protection essentially equivalent to that ensured within the European Union, is the one located in Brussels. However, to our knowledge, none of the Contractual Compliance team members is located there.

4. How is personal data protected by the GDPR that was collected by ICANN before May 25th being treated? For example, is personal data collected in the course of processing compliance complaints prior to May 25th or contained in compliance complaints that were received before May 25th still being retained by ICANN? If so, under what legal basis?

5. When will ICANN update the terms of service applicable to requestors of personal data? The terms of service and the privacy policy solely apply to the requestor’s personal data and not the subject to whom the requested data belongs (<https://www.icann.org/privacy/tos> and

<https://www.icann.org/privacy/policy>). These documents need to detail the safeguards put in place by both ICANN and by the requestor if ICANN shares—or intends to share—the personal data with the requestor.

We are confident that ICANN is taking the requirements of data minimization and meaningful consent seriously and anxiously anticipate the implementation of solutions that appropriately respects the personal data of both registrants and complainants. We hope that the answers to these questions will provide clarity and minimize the risks to both ICANN and contracted parties. We also look forward to continuing to work with ICANN Contractual Compliance to ensure the smooth and safe operation of our industry.

Sincerely,

Graeme Bunton,
Chair, Registrar Stakeholder Group