

WHOIS and Data Protection Policy

10 March 2019

ICANN | GAC
Governmental Advisory Committee



ICANN64 GAC Plenary Meeting - Agenda Item 6.1

- **WHOIS and Data Protection Policy** - Agenda Item 6.1 (this session)
- **GAC Meeting with the GNSO** - Agenda Item 7.2
(Today 15:15-16:15)
- **Preparation for meeting with the ICANN Board** - Agenda Item 9.1
(Monday 13:30-14:30)
- **Cross Community Session on Next Steps in ICANN's response to the GDPR** (Monday 15:15-16:45)
- **WHOIS and Data Protection Policy** - Agenda Item 10.2
(Tuesday 9:00-10:15)
- **Briefing to the GAC from the Technical Study Group on Access to gTLD Registration Data** - Agenda Item 12.3
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- 1. Takeaways of the Cross Community Session**
- 2. EPDP Phase 2**
- 3. Follow-up on Previous Developments**

- Need for precise timeline, with interim milestones (but concerns with workload driving away valuable contributions)
- Need for clearly defined, narrow scope
- Accreditation
- Codes of conduct
- Need for ability to cross-reference data to meet law enforcement investigative needs
- Recognition of end-users right to know who they are dealing with online
- Implementation options should be considered in parallel to policy development in Phase 2
- Requests for legal Advice and guidance from DPAs
- Need to manage risks of liability

Priorities for the GAC

- Clearly defined and definite timeframe to deliver expeditiously
- Clearly defined and narrow scope
- Concerns: Many complex issues of Phase 1 pushed to Phase 2
- Need sound legal advice upfront and throughout
- Additional priorities identified by GAC Members ?

- ICANN's [Framework Elements](#) (18 June 2018) and [Draft Framework for a Possible Unified Access Model](#) (20 August 2018) called on the GAC and governments to (or contribute to):
 - Identify broad categories of eligible user groups
 - Identify relevant bodies with expertise to authenticate users
 - Develop the standardized terms and safeguards common across each Code of Conduct
 - List authorities to be accredited
- [Letter](#) from ICANN CEO (4 Sept. 2018) requesting guidance from Governments on ways to diminish the legal risk for data controllers:
 - Recognition of WHOIS as “*necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller*”
 - Possibility to delegate to a third party the decision-making authority to make determinations about whether a particular person or categories of persons (e.g. law enforcement authorities, intellectual property rights holders) have a legitimate interest in accessing non-public WHOIS data

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