

Overview of WHOIS Compliance with GDPR (incl. Expedited PDP)

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ICANN63 GAC Plenary Meeting - Agenda Item 11

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- Bring all GAC members up to speed on relevant GDPR-related developments
- Identify key questions for GAC meetings with:
 - ICANN Board - **Tuesday 15:15-16:15**
 - Generic Names Supporting Organization - **Today 15:45-16:45**
- Identify GAC consensus views / agreed messages, to be shared:
 - With the ICANN Board
 - During GAC Bilateral meetings (ALAC, ccNSO, GNSO)
 - During Cross Community Sessions
 - EPDP on gTLD Registration Data - **Monday 15:15-16:45**
 - GDPR - **Wednesday 09:45-12:15**
- Support drafting of GAC advice as appropriate

- Maintaining WHOIS to the greatest extent possible, while complying with GDPR
- Effective access to non public data for legitimate purposes:
 - Law enforcement
 - Consumer protection
 - Cybersecurity professionals
 - IP Rights holders
- Publication of minimum contact data (consider pseudo anonymized email addresses) to enable contactability and cross-referencing of registrations by registrants
- Availability of contact information for legal entities
- Addressing specific needs of law enforcement (such as maintaining confidentiality & sufficient query volume)

Three areas continue to require GAC attention and participation:

1. Follow-up on GAC Advice
2. GNSO Expedited Policy Development Process (EPDP) to replace the Temp. Spec. within 1 year (May 2019)
3. Unified Access Model for Continued Access to Full WHOIS Data (ICANN Framework for discussion)

Review of Relevant GAC Advice

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GAC [Abu Dhabi Communiqué](#), Section VII. (1 November 2017):

3. GDPR/WHOIS

a. The GAC advises the ICANN Board that:

- i. **the [2007 GAC WHOIS Principles](#) (attached) continue to reflect the important public policy issues associated with WHOIS services.** Accordingly, ICANN should take these issues into account as it moves forward with its planning to comply with the European Union's General Data Protection Regulation (GDPR). In these principles, **the GAC has notably recognized that WHOIS data (also known as Registration Directory Services) is used for a number of legitimate activities, including:**
 1. Assisting law enforcement authorities in investigations and in enforcing national and international laws, assisting in combatting against abusive use of internet communication technologies;
 2. Assisting businesses, other organizations, and users in combatting fraud, complying with relevant laws, and safeguarding the interests of the public;
 3. Combatting infringement and misuse of intellectual property; and
 4. Contributing to user confidence in the Internet as a reliable and efficient means of information and communication by helping users identify persons or entities responsible for content and services online

[Accepted](#) by the ICANN Board (4 Feb. 2018)

GAC [Abu Dhabi Communiqué](#), Section VII. (1 November 2017):

3. GDPR/WHOIS

[...]

Accordingly,

b. the GAC advises the ICANN Board that:

i. as it considers how to comply with the GDPR with regard to WHOIS, it should **use its best efforts to create a system that continues to facilitate the legitimate activities recognized in the 2007 Principles**, including by:

1. Keeping WHOIS quickly accessible for security and stability purposes, for consumer protection and law enforcement investigations, and for crime prevention efforts, through user-friendly and easy access to comprehensive information to facilitate timely action.
2. Keeping WHOIS quickly accessible to the public (including businesses and other organizations) for legitimate purposes, including to combat fraud and deceptive conduct, to combat infringement and misuse of intellectual property, and to engage in due diligence for online transactions and communications.

[Accepted](#) by the ICANN Board (4 Feb. 2018)

GAC [San Juan Communiqué](#), Section V. (15 March 2018):

1. GDPR and WHOIS

[...]

a. the GAC advises the ICANN Board to instruct the ICANN Organization to:

- i. Ensure that the **proposed interim model maintains current WHOIS requirements to the fullest extent possible**;
- ii. Provide a **detailed rationale for the choices made** in the interim model, explaining their necessity and proportionality in relation to the legitimate purposes identified;
- iii. In particular, **reconsider the proposal to hide the registrant email address** as this may not be proportionate in view of the significant negative impact on law enforcement, cybersecurity and rights protection;

All [accepted](#) by the ICANN Board (30 May 2018)

GAC [San Juan Communiqué](#), Section V. (15 March 2018):

[...] Furthermore,

b. the GAC advises the ICANN Board to instruct the ICANN Organization to:

- i. **Complete the interim model as swiftly as possible**, taking into account the advice above. Once the model is finalized, the GAC will complement ICANN's outreach to the Article 29 Working Party, inviting them to provide their views;
- ii. **Consider the use of Temporary Policies and/or Special Amendments** to ICANN's standard Registry and Registrar contracts to mandate implementation of an interim model and a temporary access mechanism; and
- iii. **Assist in informing other national governments not represented in the GAC** of the opportunity for individual governments, if they wish to do so, to provide information to ICANN on governmental users to ensure continued access to WHOIS.

All [accepted](#) by the ICANN Board (30 May 2018)

GAC [San Juan Communiqué](#), Section V. (15 March 2018):

1. GDPR and WHOIS

[...]

a. the GAC advises the ICANN Board to instruct the ICANN Organization to:

[...]

- iv. **Distinguish between legal and natural persons**, allowing for public access to WHOIS data of legal entities, which are not in the remit of the GDPR;
- v. **Ensure continued access to the WHOIS, including non-public data, for users with a legitimate purpose**, until the time when the interim WHOIS model is fully operational, on a mandatory basis for all contracted parties;
- vi. Ensure that **limitations in terms of query volume** envisaged under an accreditation program balance realistic investigatory cross-referencing needs; and
- vii. Ensure **confidentiality of WHOIS queries by law enforcement agencies**.

Decision of ICANN Board [deferred](#) (17 May 2018) per GAC [request](#) (17 May 2018)

Text of advice included as “Annex: Important Issues for Further Community Action” into [Temporary Specification for gTLD Registration Data](#) (25 May 2018)

GAC [Panama Communiqué](#) Section V. (28 June 2018):

1. GDPR and WHOIS

The GAC considers that a unified access model is central to providing access to non-public WHOIS data for users with a legitimate purpose and this should continue to be addressed as a matter of urgency. Therefore,

a. the GAC advises the ICANN Board to:

i. Take all steps necessary to ensure the development and implementation of a unified access model that addresses accreditation, authentication, access and accountability, and applies to all contracted parties, as quickly as possible;

Board [response](#) (16 Sep. 2018): the Board appreciates the GAC's communication on the sense of urgency as it relates to developing a unified access model. The Board notes that the ICANN org continues to seek input on the critical components of a unified access model [...]. The Board welcomes and encourages the GAC's input to this process.

ii. Publish a status report, four weeks prior to ICANN 63.

The Board [directed](#) (16 Sep. 2018) the ICANN org to continue to provide the GAC with regular updates on progress related to the development of a unified access model, in addition to providing the [Status Report](#) sent to GAC Chair (8 Oct. 2018)

Temporary Specification and Expedited PDP

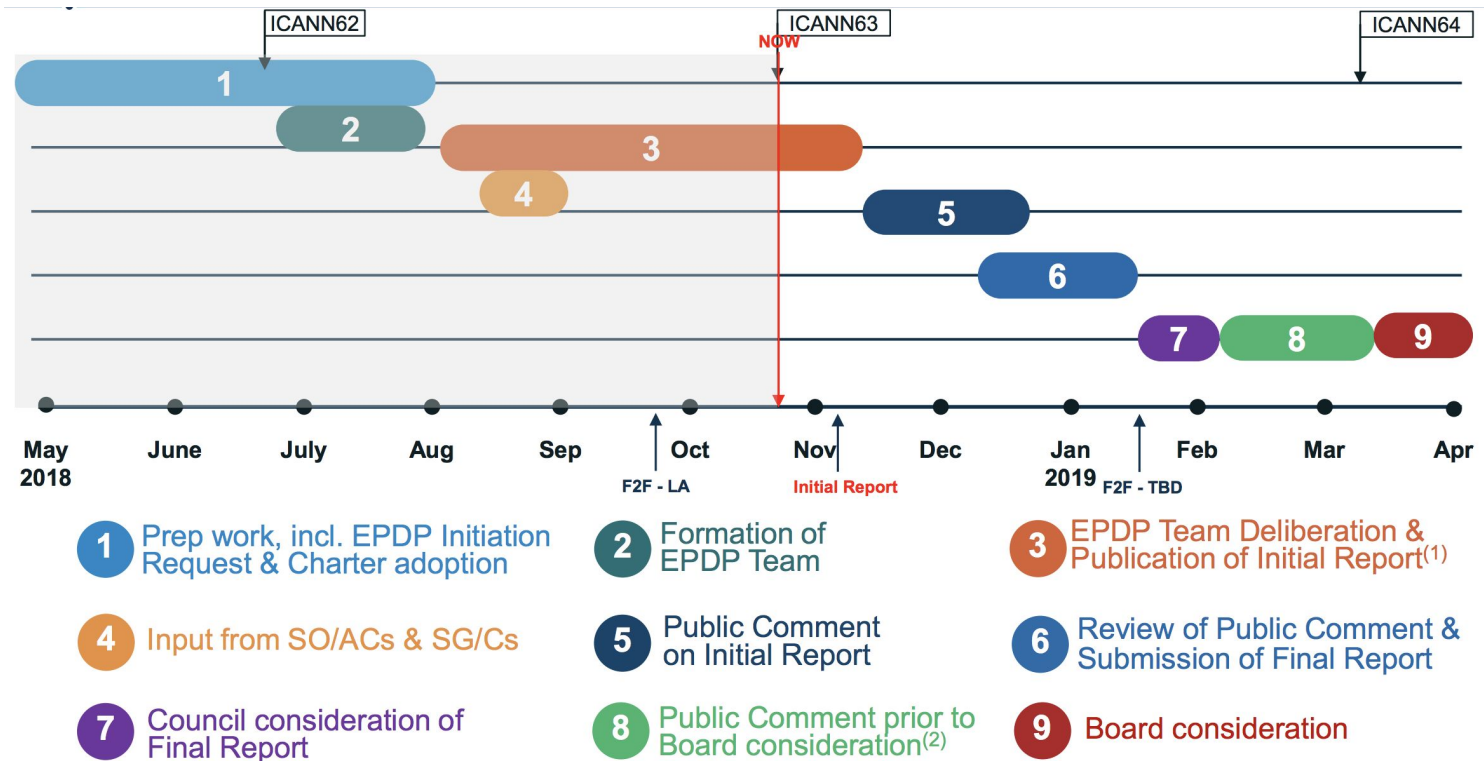
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- [Temporary Specification for gTLD Registration Data](#) adopted by ICANN Board (17 May 2018) and [reaffirmed](#) (21 August 2018)
- Reflects ICANN's [Proposed Interim Compliance Model](#) (8 March 2018) with input provided by the GAC in the process on [29 January](#) and [9 March 2018](#)
- ICANN enforces new contractual requirements on Registries/Registrars
- Public interests is affected
 - Access to non-public data is now subject to decision of the over 2000 contracted parties, who may each follow distinct procedures, on a case by case basis (“**reasonable access**” requirement)
 - Law enforcement investigations may be impaired by access challenges, limitation of query volumes and compromised confidentiality of WHOIS queries (see [survey of law enforcement](#) by RDS2 Review Team, and recent [survey](#) by APWG)
- Board must reaffirm its adoption of the Temporary Specification every 90 days, for 1 year max., until it has become a Consensus Policy

2) Expedited PDP To Replace the Temp. Spec.

- A GNSO Expedited Policy Development Process (EPDP) was launched on 19 July 2018 to replace the Temp. Spec. before it expires on 25 May 2019 (see [timeline](#))



16 Days to Initial Report

216 Days to Temp Spec Expiration

- A GNSO Expedited Policy Development Process (EPDP) was launched on 19 July 2018 to replace the Temp. Spec. before it expires on 25 May 2019 (see [timeline](#))
- The GAC is represented by 3 members and 3 alternates per EPDP [Charter](#)
 - Kavouss Arasteh (Iran)
 - Ashley Heineman (United States)
 - Georgios Tselentis (European Commission)
 - Rahul Gosain (India)
 - Laureen Kapin (United States)
 - Chris Lewis-Evans (United Kingdom)
- In terms of scope and workplan, per EPDP Charter:
 - access to non public data to be addressed at a later time ...
 - ... subject to consensus on definition of purposes for processing data and related processing activities (collection, transfer, publication).

- GAC Representatives in the EPDP have been working daily to coordinate and represent the interests of the GAC in deliberations
- **Key issues** identified in the [GAC Early Input](#) (7 Sept. 2018) regarding the Temporary Specification, include:
 - Compliance with national and regional data protection laws
 - Adequacy of purposes for processing data vis à vis public interest
 - Lack of definition of reasonable access
 - Need to address “Important Issues for Further Community Action”
- **Outcomes** to date include:
 - a [Triage Report](#) (11 Sept. 2018) shows little agreement on Temp. Spec. + diversity of [views](#) represented in the EPDP Team.
 - A set of tentative [purposes for processing of Registration Data](#) with their associated data elements, processing activities and relevant legal justifications.

- **Next Steps:** First initial Report in early November
 - Will not include consideration of an access model, which, per EPDP Charter, would be a matter for a subsequent additional Initial Report, not yet factored in the [EPDP Timeline](#).
 - May only propose clarifications to the requirement of “*reasonable access*” contained in the [Temporary Specification](#).

- **Outlook for the GAC**
 - Decisive outcome on access to non-public data may not occur in a time frame compatible with the public interests at stake
 - Requirements in the Temporary Specification for contracted parties to provide “reasonable access” to non-public information are insufficient and at best, encourage a fragmented system

Unified Access Model

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- **Before and During the development of Temporary Specification, the ICANN Community** was active developing models or advice regarding access:
 - BC/IPC [Accreditation and Access Model](#) v1.6 (18 June 2018)
 - SSAC [Advisory Regarding Access to Registration Data](#) (14 June 2018)
- **ICANN Org** [published](#) a draft High-Level Framework for a [Unified Access Model](#) for Continued Access to Full WHOIS Data (18 June 2018)
 - Layed out a series of central questions to frame discussions
 - Included a [comparison](#) with community models
- In the meantime ICANN has been engaging with **Data Protection Authorities**
 - The European Data Protection Board (EDPB) issued new [guidance](#) to ICANN (5 July 2018)
 - ICANN Org [highlighted](#) the EDPB's expectation that ICANN develop *"a WHOIS model which will enable legitimate uses by relevant stakeholders, such as law enforcement"*
- **ICANN Org** published a revised [Draft Framework for a Possible Unified Access Model](#) for Continued Access to Full WHOIS Data (20 August 2018) and [indicated](#) that it was seeking legal clarity on the matter, including possibly shifting the liability from Contracted Parties to ICANN for providing access to non public data

- **The GAC provided [Initial Comments](#)** on ICANN’s Draft Framework for a possible Unified Access Model (16 October 2018) supporting:
 - A single user interface provided by ICANN that would allow authenticated users to perform queries of non-public WHOIS data
 - Decentralized authentication methods/bodies for each type of legitimate user of WHOIS data, incl. procedures for the public at large (who may have legitimate interests in seeking data)
 - Using the new RDAP protocol as a technical method for accessing data
 - Strong safeguards to guide access to WHOIS data in order to prevent and deter abuse or misuse of WHOIS data, while protect the confidentiality of investigations
- **The GAC also encouraged** ICANN to continue exploring all possible methods for ICANN to be acknowledged as the “coordinating authority of the WHOIS system” given its role as a data controller
- **The key challenge** remains to determine when and how such a model can be developed.

Schedule of GDPR Sessions During ICANN63

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Sunday 21 October

- 11:30 - GAC Discussion with IPC/NCSG
- 15:45 - GAC Meeting with the GNSO
- 17:45 - Technical Seminar on WHOIS and Data Protection/Privacy Issues

Monday 22 October

- 12:15 - HLG Session 2 - Cybercrime, Data Protection and Privacy
- 13:30 - PSWG Informal Meeting
- 15:15 - High Interest Topic Session on EPDP - Review of Draft Initial Report

Tuesday 23 October

- 08:30 - PSWG meeting
- 09:30 - GDPR Discussion (GAC Plenary)
- 15:15 - GAC Meeting with ICANN Board

Wednesday 24 October

- 09:45 - Cross Community Session on GDPR
- 13:30 - GAC Post Cross-Community Session Discussion on GDPR
- 13:30 - WHOIS/RDS Update by ICANN GDD (111/112)