

**I C A N N**  
**POLICY FORUM**

**65**

**MARRAKECH**

24-27 June 2019



# WHOIS and Data Protection Policy

26 June 2018

ICANN | GAC  
Governmental Advisory Committee



ICANN65 - GAC Plenary - Agenda Item 8.1

1. Status Update
2. Access Model Example:  
Differentiated Registrant Data Access (M. Palage)
3. Expected GAC Input to
  - EPDP Phase 2
  - ICANN Org request to provide list of authorities that need access
4. User Group and Their Purposes
5. Consideration of GAC Advice

## Current Applicable Policy

- On 20 May 2019, the [Temporary Specification on gTLD Registration Data](#) expired  
Now replaced by the [Interim Registration Data Policy for gTLDs](#)
- EPDP Phase 1 Policy [Implementation](#) process: 29 February 2020 effective date for the final Registration Data Policy may not be met
- Impact on law enforcement investigations (section IV.2 of the [GAC Barcelona Communiqué](#))

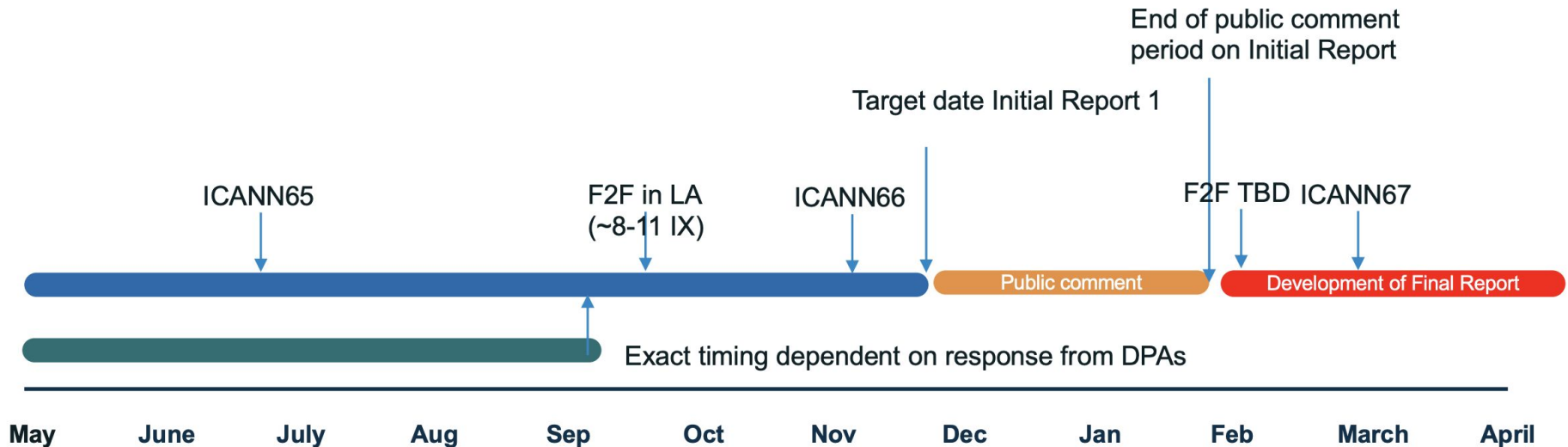
## ICANN Org & DPAs Engagement

- On 2 May 2019, the TSG [announced](#) having submitted its [Final Technical Model](#) (30 April 2019)
- To inform discussions between ICANN org, European Commission and the European Data Protection Board to “*determine whether a unified access model based on the Technical Model reduces legal liability for the contracted parties.*”

## Policy Development - Phase 2

- The EPDP Team has resumed its [weekly meetings](#) (Phase 2), with Janis Karklins as Chair
- GAC’s representation in the EPDP Team for Phase 2:
  - 3 “Members”: Ashley Heineman (US), Chris Lewis-Evans (UK), Georgios Tselentis (European Commission)
  - 3 “Alternates”: Olga Cavalli (Argentina), Rahul Gossain (India), Laureen Kapin (US)

# Status Update - EPDP Phase 2 Timeline



- Priority 1 & Priority 2  
Deliberation on issues outlined on slide 4
- Priority 1  
Coordination with Org on UAM questions

- Items from priority 2 could be incorporated in the Initial / Final Report for priority 1, depending on their date of completion or presented separately. Decision on reporting format will be taken not later than ICANN 66.
- Use work sheets to map out dependencies and expected timing for priority 2 items
- Finalization of priority 2 items may extend beyond the timeline depicted above as a result of dependencies



## GAC Early Input into EPDP Phase 2

- GAC Working Definition
  - Access vs. Disclosure
  - Unified Access Model
  - Centralized
  - User Group(s)
  - Accreditation
- EPDP Phase 2 expected to develop policy associated with an access/disclosure model without having even the most basic conceptual agreed understanding of what that model will be.
- Therefore: the GAC assumes that the model will ultimately be centralized with a standardized set of processes, procedures and requirements.
- There remain a number of outstanding policy issues regarding user groups, purposes, and legitimate interests

## ICANN Org request to provide list of authorities that need access (Unified Access Model)

*Governments within the European Economic Area (who also are members of the GAC) would identify or facilitate identification of broad categories of eligible user groups (“Eligible User Groups”). Building from this guidance, ICANN org would engage with other governments through the GAC to identify specific Eligible User Groups.*

Source: <https://www.icann.org/en/system/files/files/framework-elements-unified-access-model-for-discussion-20aug18-en.pdf>

## **Example: Criminal Law enforcement/national or public security authorities**

*A government entity's authority to investigate, detect, prevent, disrupt, and prosecute criminal activity (including but not limited to terrorism); protect the national security, public safety, public health, or other vital interests of natural persons under a government's protection; protect against threats to the government, its people, property, or interests; or the exercise of the official or statutory authority vested in a government authority to pursue such activities;*

## **Other User Groups:**

- Civil law enforcement authorities
- Regulatory enforcement authorities
- Cybersecurity Experts
- IP Rights holders



## Previous Advice

- [GAC San Juan Communiqué](#) (15 March 2018): ICANN Board [accepted](#) all advice but 3 elements [still deferred](#):
  - Distinguish between legal and natural persons
  - Ensure that limitations in terms of query volume balance realistic investigatory cross-referencing needs
  - Ensure confidentiality of WHOIS queries by law enforcement agencies
- [GAC Kobe Communiqué](#) (14 March 2019): Board [acknowledged or accepted](#) all of the advice

## For GAC Discussion

- Concerns with timeline (time needed for development + implementation)
- Continued impact of lack of access to non-public data