



ELECTRONIC FRONTIER FOUNDATION

Protecting Rights and Promoting Freedom on the Electronic Frontier

January 26, 2018

Göran Marby
President
Internet Corporation For Assigned Names and Numbers
12025 Waterfront Drive, Suite 300
Los Angeles
CA 90094-2536, USA

Dear Mr Marby,

Proposed Interim Models for Compliance with ICANN Agreements and Policies in Relation to the European Union's General Data Protection Regulation

Thank you for the opportunity to provide comments on the Proposed Interim Models for Compliance with ICANN Agreements and Policies in Relation to the European Union's General Data Protection Regulation. The Electronic Frontier Foundation (EFF) is the leading nonprofit organization defending civil liberties in the digital world. Founded in 1990, EFF champions user privacy, free expression, and innovation through impact litigation, policy analysis, grassroots activism, and technology development. We work to ensure that rights and freedoms are enhanced and protected as our use of technology grows.

We consider the best model presented to be Model 3 (with a slight modification noted below). Thus we suggest that rather than embarking upon the construction of a potentially complex and contentious accreditation mechanism for authorized parties to obtain access to registrant data, ICANN should instead rely on existing legal mechanisms that allow parties to gain such authorization—for law enforcement officers this would be a warrant, and for private civil litigants a subpoena.

The modification to Model 3 that we would suggest is that rather than requiring a case by case evaluation of each field in each registration record to determine whether it contains personal data, it should be assumed that the name, phone number, and address fields contain personal data, and these should be withheld from public display unless the registrant actively provides their voluntary, informed consent.

We note that many country code registries, including those of Albania, Austria, Canada, Denmark, France, Germany, Greece, Sweden, and others, already exclude personal data of individuals from WHOIS records by default. Similarly for the .eu domain, only an email address of individual registrants is shown by default. So the adoption of something like Model 3 has in fact already been widely and successfully tested in practice.

815 Eddy Street • San Francisco, CA 94109 USA

voice +1 415 436 9333

fax +1 415 436 9993

web www.eff.org

email information@eff.org

As a further addition to Model 3, we suggest that legitimate contact with registrants could be facilitated by the use of a CAPTCHA-protected contact form which would deliver email to the appropriate contact point with no need for a warrant or subpoena to be obtained to reveal the registrant's actual email address. This is similar to the existing practices of some registries and registrars. For example, registry services operator Key-Systems GmbH allows its registry clients to display only a randomly assigned temporary email address as a contact point.

Yours faithfully,

ELECTRONIC FRONTIER FOUNDATION
Jeremy Malcolm, Senior Global Policy Analyst