

GAC PSWG Discussion: GDPR & WHOIS

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- ⦿ Update on Recent Developments (Cathrin Bauer-Bulst)
- ⦿ PSWG priorities for interim model (Laureen Kapin)
- ⦿ Potential GAC Advice (discussion)

Update on Recent Developments

- In July 2017 the PSWG provided [comments](#) on the review of the [ICANN Procedure for Handling Whois Conflict with Privacy Law](#), and on Whois Uses Cases
- ICANN published a [Whois Use Case Matrix](#) in August which was [sent](#) to all EU DPAs
- At the conclusion of ICANN60, on 1 November 2017, in its [Abu Dhabi Communiqué](#), the GAC advised the ICANN Board on this issue. This advice was subsequently [accepted by the ICANN Board](#) on 4 February 2018.
- On 2 November, ICANN [announced](#) it would defer taking compliance action against registries or registrars submitting a reasonable compliance model.
- On 21 December, ICANN [published](#) additional [legal analyses](#) ([Part 2](#) and [Part 3](#)), and sought Community input on the layered access approach proposed to comply with the GDPR. It also set an aggressive timeline for settling on a compliance model for ICANN by end of January

- On 12 January, ICANN [published](#) 3 proposed models for review by 29 January. These were discussed between the GAC and ICANN Org on 25 January, in the [second joint call](#).
- On 29 January, the GAC provided its [comments](#) and suggested a fourth compliance model ICANN announces “interim” model
- On 28 February 2018, after engaging with various parts of the community for a few weeks, including the GAC in the third joint call of 21 February 2018 (Notes forthcoming), ICANN [published](#) a [summary description](#) of its Proposed Interim Model,
- On 7 March 2018, ICANN [reported](#) on its engagement with the Article 29 Working Party regarding the proposed interim model
- On 8 March 2018, ICANN [published](#) additional details about the proposed interim model in a so-called “[cookbook](#)”.

PSWG Priorities For Interim Whois Model

- ⦿ Framework to address law enforcement needs
- ⦿ Continued collection of full “thick” Whois data
- ⦿ Role for GAC in advising on potential accreditation systems
- ⦿ Role for GAC in advising on Codes of Conduct for access to non-public data by users pursuing legitimate purposes, e.g.,
 - Cybersecurity researchers
 - IP rights holders
 - Consumer protection advocates
- ⦿ Maintaining current data retention requirements
- ⦿ Any future accreditation will maintain full access by law enforcement agencies
- ⦿ Any future accreditation will maintain anonymized Whois requests

- ⦿ Further rationale and explanation for masking:
 - Registrant's name
 - Registrant's email
 - Information of legal (not individual) entities (including name)
 - Administrative and technical contact's state/province and country
- ⦿ Lack of *required* temporary system that provides access channel for law enforcement and third parties to access non-public Whois data until formal accreditation system for law enforcement and other user groups can be developed and implemented
- ⦿ “Over-compliance” with GDPR (masking information from legal entities despite fact that GDPR does not apply to them)
- ⦿ absence of measures to improve data quality and accuracy
- ⦿ Lack of clarity of GAC role

- ⦿ Attach March 8, 2018 Comment (w/minor updates) to Communique as GAC Advice (encourages revisions to interim model)
- ⦿ Condition implementation of any interim model on *required* temporary system for access to non-public information by law enforcement and user groups
- ⦿ GAC will provide advice and guidance on accreditation for law enforcement and high level codes of conduct of user groups for access to non-public information