

FOR DISCUSSION PURPOSES

Status report on analysis relating to transition to thick WHOIS

Introduction

The legal review contemplated by recommendation #3 of the Final Report on the Thick WHOIS Policy Development Process is underway, and we have made significant progress. The review has taken longer than anticipated because of the complexities of the issues and the challenges of defining the appropriate scope and approach for the analysis, particularly in light of parallel ongoing activities that are considering some of the same issues in somewhat different contexts, including the review process for WHOIS Requirements and National Law Conflicts (<https://www.icann.org/news/announcement-2014-10-14-en>) and the gTLD Directory Services Expert Working Group Report detailing recommendations for a next-generation Registration Directory Service (<https://www.icann.org/en/system/files/files/final-report-06jun14-en.pdf>).

We began by undertaking a review of (a) the EU Data Protection Framework for the reason outlined in the Staff Paper to the Expert Working Group on gTLD Registration Data of 29 August 2013 (EWG Memo): “*generally speaking, E.U. Data Protection Directive 95/46/EC imposes the most comprehensive and stringent standards on data collection, processing and transfers,*” and (b) personal data protection issues, on a generalized basis and not specific to a particular jurisdiction, that may arise with respect to transition from thin Whois to thick Whois.

The next steps will be further refinement of that analysis and a review of data protection issues that arise in select jurisdictions that have distinct approaches or specific legislation that raise unique issues. ICANN welcomes questions or suggestions from the IRT as we proceed with this analysis.

Preliminary Conclusions

The transition from thin to thick WHOIS will require a lawful basis for disclosure, transfer and retention of data.

Generally, this may be established in one or more of the following ways:

- based on the purposes for which the data is being disclosed or transferred,
- based on consent obtained from the registrants,
- based on qualification under a safe harbor provision;

It appears that standard clauses in registration agreements may help address legitimate use, purpose limitations and registrant consent in most jurisdictions.

Some laws or potential laws in specific countries may require special consideration, especially insofar as they may seek to impose obligations that require storage and/or processing of personal information only within the borders of a particular country.

Next Steps

Below is the target schedule (which may be subject to change based on circumstances out of our control pertaining the complexity and scale of the legal analysis that remains to be completed).

By 19 December 2014	IRT to provide feedback and questions for consideration in connection with completion of the analysis
By ICANN52	Submission to IRT of completed analysis and proposals for implementation of transition to thick WHOIS