

Reconciling WHOIS and GDPR (slot H)

Can't We All Just Get Along?

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Non-Contracted Party House Intersessional

2 February 2018

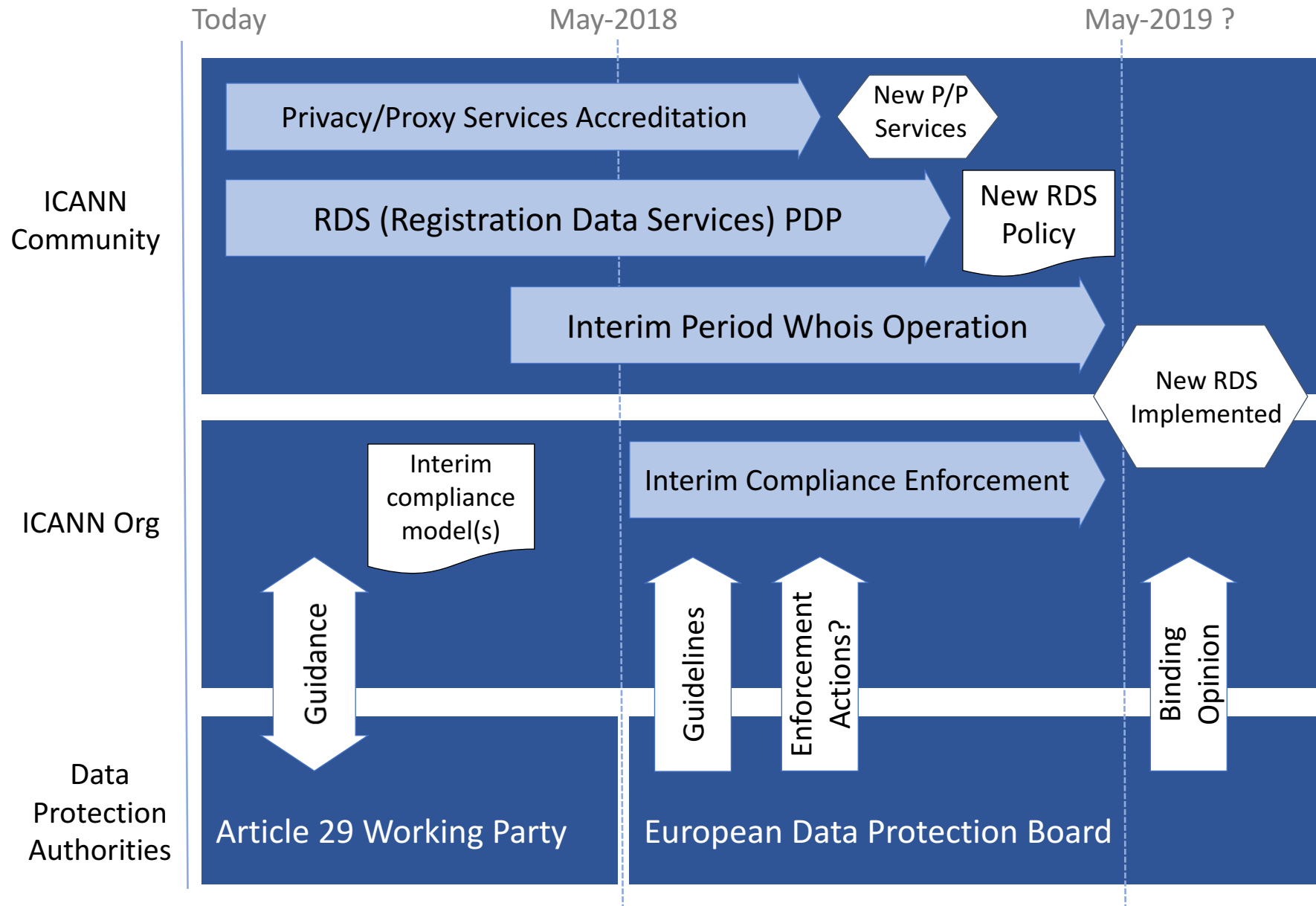


in·ter·im *adjective*, for the intervening period; provisional or temporary

ICANN model memo admits the **interim** model *will not replace multistakeholder policy development and implementation activities underway, including:*

1. efforts to enhance **privacy & proxy** services available to registrants;
2. updates to ICANN's **Procedure for Whois conflicts with Privacy Law**; and
3. **development of a new policy framework** to support potential next-generation registration directory services
4. Broader requirements to meet GDPR compliance

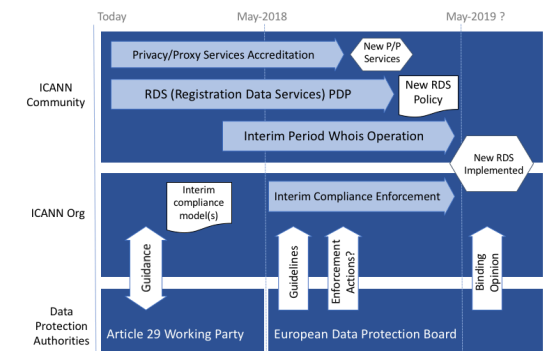
Context & Timeline



Community Work that will replace **interim** measures:

1. efforts to enhance **privacy & proxy** services

- If an EU registrant uses **today's** P&P services, does that accomplish GDPR compliance?
- The *Privacy/Proxy Services Accreditation Implementation* project is now in **Analyze & Design**.
- Will **PPSAI outcomes** help with GDPR compliance?
- Will **costs of P&P requests** be significant?



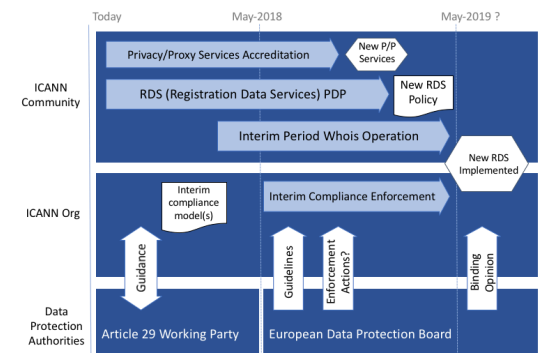
Community Work that will replace **interim** measures:

2. ICANN's **Procedure for Whois conflicts with Privacy Law**

Why isn't **current Procedure** being used for Whois conflicts **with GDPR**? That procedure includes:

- begins with a Whois proceeding or Alternative Trigger
- consultation with registrars & registries
- public consultation (if Alternative Trigger)
- ICANN legal analysis & recommendation
- ICANN board approval

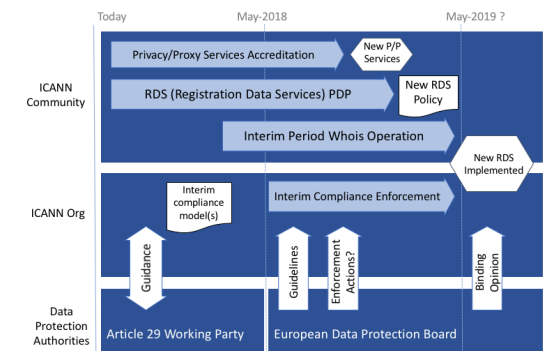
Ultimately, will there be EU DPA enforcement actions?



Community Work that will replace **interim** measures:

3. **development of a new policy framework** to support potential next-generation registration directory services

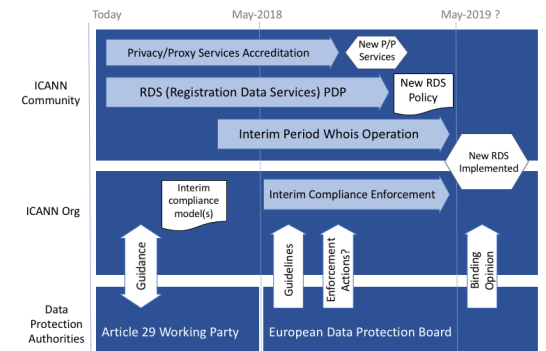
- What's the **current status** of the RDS PDP?
- How to **accelerate** this PDP towards a policy framework that complies with GDPR and other privacy laws?
- In 2018-19, **operational experience** and **legal review** of interim model(s) should help this PDP
- Is the work of **Whois Review Team** relevant?



Community Work that will replace **interim** measures:

(cont'd) 3. **development of a new policy framework** to support potential next-generation registration directory services

- Is a **Tiered Access model** attracting consensus?
- Will we need an **EU Privacy Risk Assessment**?
- What about **other national laws**?
- **Costs** of accreditation for tiered access?
- **Methods** for accreditation and authorization of recipients of data in tiered access model



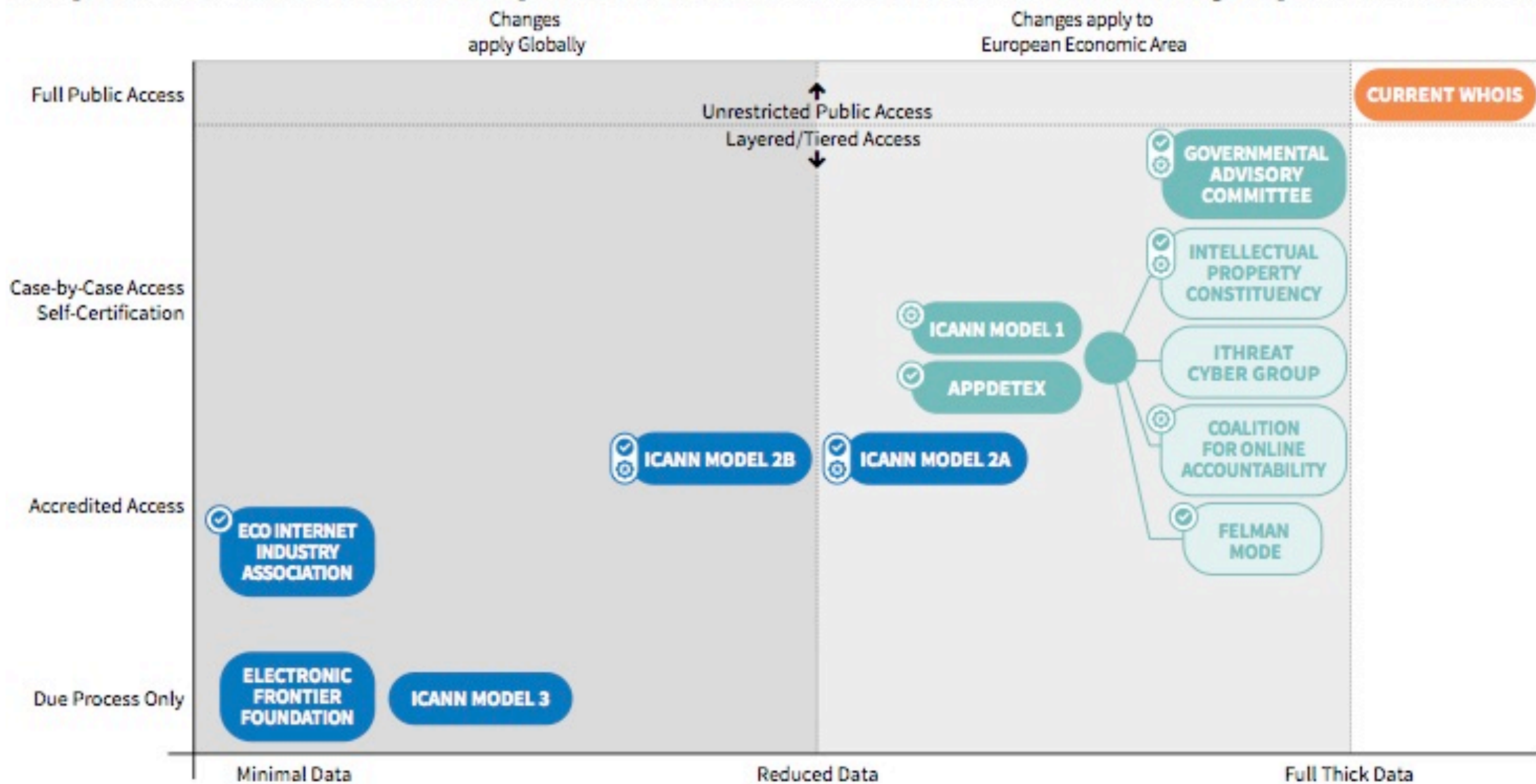
Selecting and Implementing the **interim** model

ICANN model memo says ICANN Org will “continue to refine the potential compliance models **based on feedback**”

ICANN Org will “**settle on a single model**” and “next steps”

- Who and how to “**settle on**” a model?
- Why just a **single model**?
- Will Registries & Registrars be **required** to use the model?
- How to adjust to **operational experience** and **legal review** as the model is implemented ?
- Do the models respect end user rights, or reflect the views of stakeholders at ICANN?

Proposed Interim GDPR Compliance Models and Selected Community Input (Working Draft)



● Natural persons only
 ● Natural and legal persons
 ● Current WHOIS
 ✔ Accreditation
 Ⓢ Self-Certification
 To access non-public WHOIS data model requires self-certification **or** accreditation.

More on the cited models, including community comments at: <https://go.icann.org/gdprlegal>