

Small Team #3
Wed 10 October
13.00 – 15.00 UTC

Charter Questions to be addressed:

j). Temporary Specification and Reasonable Access

j1) Should existing requirements in the Temporary Specification remain in place until a model for access is finalized?

A. If so:

1. Under Section 4 of Appendix A of the Temporary Specification, what is meant by “reasonable access” to Non-Public data?
2. What criteria must Contracted Parties be obligated to consider in deciding whether to disclose non-public Registration data to an outside party requestor (i.e. whether or not the legitimate interest of the outside party seeking disclosure are overridden by the interests or fundamental rights or freedoms of the registrant)?

B. If not:

1. What framework(s) for disclosure could be used to address (i) issues involving abuse of domain name registrations, including but not limited to consumer protection, investigation of cybercrime, DNS abuse and intellectual property protection, (ii) addressing appropriate law enforcement needs, and (iii) provide access to registration data based on legitimate interests not outweighed by the fundamental rights of relevant data subjects?

j2) Can the obligation to provide “reasonable access” be further clarified and/or better defined through the implementation of a community-wide model for access or similar framework which takes into account at least the following elements:

1. What outside parties / classes of outside parties, and types of uses of non-public Registration Data by such parties, fall within legitimate purposes and legal basis for such use?
2. Should such outside parties / classes of outside parties be vetted by ICANN in some manner and if so, how?
3. If the parties should not be vetted by ICANN, who should vet such parties?
4. In addition to vetting the parties, either by ICANN or by some other body or bodies, what other safeguards should be considered to ensure disclosure of Non-Public Personal Data is not abused?

Publication of data by registrar/registry:

f2) Should standardized requirements on registrant contact mechanism be developed?

f3) Under what circumstances should third parties be permitted to contact the registrant, and how should contact be facilitated in those circumstances?

<p>EDPB Advice</p>	<p>ICANN and the registrars/registries are, as controllers, responsible for ensuring that personal data processed in the context of WHOIS are only disclosed to third parties with a legitimate interest or other lawful basis under the GDPR, also taking into account the other requirements of the GDPR. This implies putting in place an appropriate access model, with appropriate safeguards, including measures to ensure a sufficient degree of compliance assurance. The responsibility for designing a model that will provide this assurance is in first instance up to ICANN and the registrars/registries.</p>
<p>Relevant Temporary Specification Sections</p>	<p>Appendix A – 4. Access to Non-Public Registration Data</p> <p>4.1. Registrar and Registry Operator MUST provide reasonable access to Personal Data in Registration Data to third parties on the basis of a legitimate interests pursued by the third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the Registered Name Holder or data subject pursuant to Article 6(1)(f) GDPR.</p> <p>4.2. Notwithstanding Section 4.1 of this Appendix, Registrar and Registry Operator MUST provide reasonable access to Personal Data in Registration Data to a third party where the Article 29 Working Party/European Data Protection Board, court order of a relevant court of competent jurisdiction concerning the GDPR, applicable legislation or regulation has provided guidance that the provision of specified non-public elements of Registration Data to a specified class of third party for a specified purpose is lawful. Registrar and Registry Operator MUST provide such reasonable access within 90 days of the date ICANN publishes any such guidance, unless legal requirements otherwise demand an earlier implementation.</p> <p>Appendix A - Requirements for Processing Personal Data in Public RDDS Where Processing is Subject to the GDPR</p> <p>2.5. In responses to domain name queries, in the value of the "Email" field of every contact (e.g., Registrant, Admin, Tech):</p> <p>2.5.1. Registrar MUST provide an email address or a web form to facilitate email communication with the relevant contact, but MUST NOT identify the contact email address or the contact itself.</p> <p>2.5.1.1. The email address and the URL to the web form MUST provide functionality to forward communications received to the email address of the applicable contact.</p> <p>2.5.1.2. Registrar MAY implement commercially reasonable safeguards to filter out spam and other form of abusive communications.</p> <p>2.5.1.3. It MUST NOT be feasible to extract or derive the email address of the contact from the email address and the URL to the web form provided to facilitate email communication with the relevant contact.</p>

Related Questions to ICANN Org	<p><i>In section 5.7 of the Temporary Specification (and other sections), what is the meaning of “reasonable access”? Is it access to personal data reasonably provided? Does “reasonably” relate to the effort necessary to retrieve it? Does it mean how criteria for releasing it are applied, i.e., legitimate and not overcome by the rights of others? Should it just be “access”?</i></p> <p>“Reasonable access” is not defined in the Temporary Specification. Generally, compliance with the requirement for registrars and registries to provide reasonable access to non-public registration data is evaluated on a case-by-case basis, based on evidence provided by the requestor, including its request for access to non-public registration data, evidence of the requestor’s legitimate purpose for accessing the non-public registration data, the timing and content of the contracted party’s response to the request (if any), and any other information or evidence relevant to assessing the request and response.</p>
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