

6-Apr-2018

Dear Cherine and members of the Board:

The Business Constituency is writing to request that the Board accelerate its obligation to give “due consideration” to GAC consensus advice from its San Juan [Communiqué](#) regarding Whois and GDPR. The BC shares the concerns raised by the GAC, and ICANN Org’s [Proposed Interim Compliance Model](#) is significantly different from what the GAC and other stakeholders have advocated--that Whois remains publicly accessible after May 25, 2018.

While the Board waits to address GAC advice, ICANN.org is asking EU Data Protection Authorities (DPAs) to provide guidance and/or forbearance based on the Proposed Interim Model. We are concerned that ICANN.org will lock-in on its Proposed Interim Model once DPAs have reacted to it, since this could happen before the board has duly considered GAC advice that is significantly contrary to the model ICANN Org is proposing.

Specifically, the BC supports the consensus advice from the GAC to the ICANN Board, regarding ways that ICANN Org’s proposed interim model should be modified:

1. Ensure that the proposed interim model maintains current WHOIS requirements to the fullest extent possible;
2. Reconsider the proposal to hide the registrant email address as this may not be proportionate in view of the significant negative impact on law enforcement, cybersecurity and rights Protection;
3. Distinguish between legal and natural persons, allowing for public access to WHOIS data of legal entities, which are not in the remit of the GDPR;
4. Ensure continued access to WHOIS, including non-public data, for users with a legitimate purpose, until the time when the interim WHOIS model is fully operational, on a mandatory basis for all contracted parties;
5. Ensure that limitations in terms of query volume envisaged under an accreditation program balance realistic investigatory cross-referencing needs;
6. Ensure confidentiality of WHOIS queries by law enforcement agencies; and
7. Provide a detailed rationale for the choices made in the interim model, explaining their necessity and proportionality in relation to the legitimate purposes identified.

ICANN’s [Bylaws](#) require the Board to “take duly into account any advice timely presented by the Governmental Advisory Committee on its own initiative” both “in the formulation and adoption of policies” (as ICANN Org is now in the process of doing with regard to GDPR compliance policy). And if the Board decided not to follow GAC advice, the Bylaws require the Board to state its reasons for not following GAC advice.

Based on the “GAC Advice Consideration Timeline” posted in San Juan (below), the Board would not be voting on whether and how to follow GAC advice until 13-May. That would be far too late

to affect the Proposed Interim Model that ICANN Org is already presenting to DPAs for their reaction and/or forbearance on enforcement.

GAC Advice Consideration Timeline – San Juan Communique

- The following shows the tentative timeline for ICANN Board consideration of the San Juan Communique

Week	"Expected by" Date	Action	Owner
0	16 Mar 2018	Publish Communique	ICANN org & GAC
4	13 Apr 2018	Board & GAC Meeting	ICANN Board & GAC
6	25 Apr 2018	Board Working Group Review	ICANN Board
8	13 May 2018	Board adoption of new scorecard	ICANN Board
15	25 – 28 June 2018	GAC consideration of ICANN61 scorecard	GAC

The [CEO's recent blog post](#) makes it clear that ICANN Org has not given due consideration to GAC Advice that is now before the Board.

Without Board action, as encouraged by the GAC, ICANN Org is risking that the Whois service will “go dark” on May 25. As many ICANN community contributors and supporting organizations have warned, were Whois to “go dark,” that would effectively disable the DNS tool most frequently used to protect consumers, sustain a safe and stable DNS, proactively prevent crime and other malicious activities, enable cybersecurity operations, and enforcement of intellectual property rights.

We strongly encourage the Board to review the GAC Advice regarding ICANN Org’s Proposed Interim Model as soon as possible, in light of the May 25th deadline.

We look forward to your prompt attention to this concern.

Claudia Selli
Chair, ICANN Business Constituency

cc: Manal Ismail, GAC Chair