

7 July 2021

To: Amy Cadagin, Executive Director; Foy Shiver, Deputy Secretary-General  
cc: Maarten Botterman and Rod Rasmussen

Dear Ms. Cadagin and Mr. Shiver,

Thank you for your [letter dated 8 June 2021](#) about the Messaging, Malware and Mobile Anti-Abuse Working Group (M3AAWG) and Anti-Phishing Working Group (APWG) follow-up survey to the 2018 WHOIS users' survey. We also noted that the survey results were presented to the ICANN community during several ICANN71 sessions and were interested to hear the community's discussions on the findings.

As you know, the [Temporary Specification](#) established requirements to allow ICANN org and its contracted parties to continue to comply with ICANN policies and agreements in a manner that does not conflict with the European Union's General Data Protection Regulation (GDPR). In doing this, we were able to maintain the existing WHOIS system to the greatest extent possible by restricting most personal data to layered or tiered access. ICANN organization understands the importance of [access to accurate gTLD registration data](#) for Internet users, including registrants, law enforcement, intellectual property owners, and cybersecurity researchers. ICANN org's enforcement of its data accuracy contractual obligations has not changed in response to the GDPR. However, once the law took effect, the volume of complaints diminished because personal registration data became unavailable as a result of GDPR compliance efforts. ICANN org and potential complainants now lack direct access to much of the registrant contact information in registration data, making it more difficult to identify instances of registration data inaccuracy or to take action to correct them.

As your letter points out, one of the most critical issues facing ICANN and the Internet community is how to handle requests for access to nonpublic gTLD registration data. ICANN org is [conducting](#) an [Operational Design Phase \(ODP\)](#) to help inform the Board's deliberations on a range of outstanding issues around whether the proposed System for Standard Access/Disclosure (SSAD) policy recommendations are in the best interests of the ICANN community and ICANN. One of the areas the Board [asked](#) the ODP to explore are legal questions related to the processing of requests, as well as how that process ought to work. We also recently launched a [Request for Information \(RFI\)](#) to better understand what may be commercially available in the marketplace to deliver some or all of the SSAD, including existing methods for identity verification.

ICANN org continues to pursue greater legal clarity on the GDPR and the impacts of the proposed [revised Directive on Security of Network and Information Systems \(NIS2 Directive\)](#) legislation. We have been actively seeking greater clarity about the law from the European Commission and European Data Protection Board (EDPB) on several outstanding questions and issues, including whether and, if so, how ICANN org could take on the liability for disclosure decisions, rather than the gTLD registries and registrars. Based on our understanding of the law

today, ICANN's contracted parties are legally responsible for determining whether to disclose non-public gTLD registration data to third parties.

It is important to remember that the ICANN community is tasked with developing policies for gTLDs within the boundaries of the law. The community policy development process cannot, nor should it be able to, define, correct ambiguities under, or change international law. The recommendations developed by the community with respect to the SSAD extend as far as the community determined was possible, due to the ambiguity that exists under the GDPR.

The Domain Name Security Facilitation Initiative Technical Study Group (DSFI-TSG) is also [making progress toward identifying mechanisms to strengthen collaboration and communication on security and stability issues related to the Domain Name System \(DNS\)](#). We encourage M3AAWG and APWG to engage with this group.

Regards,



Göran Marby  
President and Chief Executive Officer  
Internet Corporation for Assigned Names and Numbers (ICANN)