

18 November 2019

RE: Letter from EPDP 2 to ICANN Board on Standardized System for Access/Disclosure (SSAD)

EPDP Phase 2 Working Group Members

Dear EPDP Phase 2 Working Group Members

Thank you for your [letter](#) dated 10 October 2019. We understand that the EPDP Team seeks clarity on the Board's position on the scope of operational responsibility and level of liability that ICANN org is willing to accept with respect to a System for Standardized Access/Disclosure to Non-Public Registration Data (SSAD).

Since you sent your letter, ICANN org has [published a paper](#) with questions that it has sent to the European Data Protection Board (EDPB) regarding a Unified Access Model (UAM) based on the Technical Study Group's (TSG) [technical model](#). The ICANN org paper proposes a system that centralizes responsibility for disclosure of non-public gTLD registration data. In this model, ICANN org would operate a central gateway. The Board has long supported this ICANN org effort to explore a UAM, and included this work as a [goal](#) for President and CEO Göran Marby in Fiscal Year 2020. The ICANN org effort is meant to inform the EPDP's work. Should the EPDP recommend that ICANN org operate a central gateway, the Board is open to ICANN org playing that role.

The ICANN Board, through its liaisons to the EPDP Phase 2 Team, has closely followed the work of the EPDP and greatly appreciates the thoughtful deliberations in which your group is engaged. The work of the EPDP is critical to the development of any SSAD.

As demonstrated in the attached, the Board has consistently advocated for the development of an access model for non-public gTLD registration data. If the EPDP Phase 2 Team's work results in a consensus recommendation that ICANN org take on responsibility for one or more operational functions within a SSAD, the Board would adopt that recommendation unless the Board determined, by a vote of more than two-thirds, that such a policy would not be in the best interests of the ICANN community or ICANN. Given the Board's advocacy for the development of an access model, and support for ICANN org's dialogue with the EDPB on a proposed UAM, it is likely that the Board would adopt an EPDP recommendation to this effect.

#### **UAM Proposed by ICANN Org Would Position ICANN Org as Central Gateway Operator**

In the recently published paper, ICANN org proposed a scenario in which ICANN org would operate a central gateway for processing queries for non-public gTLD registration data. The main assumption of this model is that it would be legally compliant under the European Union's General Data Protection Regulation (GDPR) to create a UAM that centralizes decision-making responsibility for the disclosure of non-public registration data. In ICANN org's view, this UAM would clearly allocate responsibility with the entities within the centralized system for (a) receiving and responding to requests for non-public registration data from requestors, (b) verifying a requestor's identity, and (c) deciding whether or not to disclose the requested data

based on defined policy criteria. ICANN org recently explained this view in its response to questions from EPDP Chair Janis Karklins, sent on [18 November 2019](#).

To the extent that the model would achieve this result, the Board is open to ICANN org undertaking this operational role. It is worth noting that in this proposed UAM, ICANN org has not proposed which entity or entities would serve as authorization providers, the parties that would determine whether a request for non-public data would be granted based on the policy governing access to non-public registration data.

### **Data Protection Authorities' Input Solicited for Input to EPDP Team's Policy Development**

The Board understands that this proposed model hypothesizes how such a model may work based on the policy choices the community recommends. The UAM is outlined based on the TSG's technical model to provide the EDPB with a hypothesis to consider as it answers ICANN org's questions about whether such a model may work under the law. The Board also understands that only the community (in this instance, the EPDP Team) can make policy. This ICANN org effort is only intended to provide an input to the community's policy-making efforts. ICANN org will deliver any input received from the DPAs to the EPDP for the EPDP Team's consideration. If the EPDP Team decides to take a different approach as a matter of policy, that is the EPDP Team's prerogative.

Any input received from the EDPB will also be instructive to the Board when it considers any policy recommendations related to a SSAD.

The Board will continue to carefully monitor the discussions in the EPDP, via its two liaisons, as you work to develop a model and stands ready to provide any other input the EPDP may require. Thank you for all your hard work on this key initiative for the Internet community.

Sincerely,



Maarten Botterman  
Chair, ICANN Board of Directors

## APPENDIX: Summary of ICANN org/Board statements, correspondence, and other communications regarding development of a Unified Access Model

The Board has consistently indicated its commitment to the development of a model that is compliant with the GDPR. In the [Annex](#) to the Temporary Specification for gTLD Registration Data, the Board identified this work as an important issue for community action. The Board has also supported this work by including in President and CEO Göran Marby's [goals](#) for this fiscal year the following: "Continue to work toward obtaining legal guidance from the Data Protection Agencies as to whether a Unified Access Model (UAM) is permissible and compliant with GDPR."

As Göran has noted in past [communications](#) and in the recent [submission](#) to the EDPB, ICANN org has posed questions about this model for the EDPB's consideration. The goal of this dialogue is to confirm whether or not it is possible to consolidate responsibility under the GDPR for the disclosure of personal data contained in non-public gTLD registration data with the entities operating the centralized system within the UAM. ICANN org worked with the European Commission and incorporated their input into this proposed model, which has been shared with the relevant data protection authorities for feedback. This feedback will be critical to helping the Board, and the community, determine what type of model may ultimately be implementable.

Below is a record of ICANN org's statements regarding its willingness to pursue such a model as well as other relevant statements, communications, and documentation that is related to this effort.

DATE	TITLE	SUMMARY
2 October 2019	<a href="#">ICANN President &amp; CEO Goals for Fiscal Year 2020</a>	Included in Göran Marby's goals for FY2020: "Continue to work toward obtaining legal guidance from the Data Protection Agencies as to whether a Unified Access Model is permissible and compliant with GDPR."
6 August 2019	<a href="#">Letter from Göran Marby to G7 High Tech Crime Subgroup</a>	The Technical Model for Access to Non-Public Registration Data, is the basis for the possible UAM ICANN org is exploring. This model will serve as an input to Phase 2 of the ICANN community's Expedited Policy Development Process (EPDP), which is focused on a standardized system for access/disclosure in addition to other topics related to registration data policy. This work will provide the EPDP with a legal framework for how such a model may be built.
25 June 2019	<a href="#">Göran Marby speaks on UAM to GNSO Council</a>	Göran explains that the only way to create a unified access model based on the TSG is to take away the

		legal risk from the contracted parties providing WHOIS data.
21 June 2019	<a href="#">Letter from G7 High Tech Crime Subgroup to Cherine Chalaby</a>	The G7 calls on ICANN to implement a unified access solution that makes non-public Whois data accessible to third parties with legitimate purposes while also complying with GDPR and other protection and privacy laws.
16 May 19	<a href="#">Letter from Göran Marby to Janis Karklins re: collaboration with EPDP team</a>	Collaboration between ICANN org Strawberries team and the EPDP team in relation to a UAM based on the model proposed by the TSG to determine whether this model would diminish the legal liability of contracted parties, who would provide access to non-public registration data.
5 March 2019	<a href="#">Letter from European Commission following Phase 1 completion</a>	The European Commission provides its view and clarification on the Purpose of a processing and accessing model, legal basis for processing, and controllership.
5 April 2019	<a href="#">Next Steps for the Technical Study Group &amp; EPDP</a>	Blog from Göran Marby describing ICANN's plan to share the TSG's model with European Data Protection Board to determine if it consolidates responsibility for disclosure in such a model.
5 April 2019	<a href="#">Letter to GNSO Council chair</a>	Letter from Göran Marby to the GNSO Council on the next steps after the EPDP team publishes their phase 1 Final Report and an update on the Technical Model on access to non public registration data.
4 April 2019	<a href="#">Letter from US Department of Commerce to the Board</a>	The US Department of Commerce calls on ICANN to create a system that allows for third parties with legitimate interests, like law enforcement, IP rights holders, and cybersecurity researchers to access non-public data critical to fulfill their missions.
11 March 2019	<a href="#">Göran Marby speaks at ICANN64: Next Steps in ICANN's Response to the GDPR</a>	Explains the significance of gaining legal advice from the European Commission and others to construct a unified access model that is compliant with the GDPR.
11 December 2018	<a href="#">Letter from Göran Marby to contracted parties RE:</a>	ICANN org is exploring technical implementations wherein requests for access to non-public data could be processed by ICANN org. In such approach

	<a href="#">3rd party access to data models</a>	ICANN org would be responsible for determining whether access should be granted based on the legitimate interests of the requestor, and if yes, then facilitate access to the data. ICANN org is continuing discussions with European data protection authorities, to determine whether the approaches we are pursuing are in line with the GDPR.
11 December 2018	<a href="#">Letter from Göran Marby to Anti-Phishing Working Group (APWG)</a>	ICANN org considers the results of the letters regarding GDPR and the WHOIS User Survey as they continue to explore to explore a possible unified access model that also diminishes the legal risks associated with the European Union's General Data Protection Regulation (GDPR) for ICANN's contracted parties.
11 December 2018	<a href="#">Letter from Göran Marby to MARQUES Cyberspace team RE:Importance of access to WHOIS data post-GDPR</a>	ICANN org is exploring technical implementation approaches that would put ICANN at the center of requests for non-public data. However, the technical solution that is being developed is not intended to create a centralized WHOIS, rather it is to find an access model that will lower the risk for contracted parties. ICANN org is continuing discussions with European data protection authorities, to determine whether the approaches we are pursuing are in line with the GDPR.
8 November 2018	<a href="#">Göran Marby blog on Data protection/ privacy issues: ICANN63 wrap-up and next steps</a>	Göran Marby shares the next steps for the Technical Study Group and their upcoming discussions with European Data Protection Board (EDPB).
20 August 2018	<a href="#">Possible Unified Access Model Published for Community Input</a>	This document described ICANN org's work to develop a proposed model and emphasizes this is not intended to replace the community's policy development process. It seeks to address the legal risks for data controllers/contracted parties in order to develop a workable unified access model.
25 May 2018	<a href="#">Temporary Specification for gTLD Registration Data, Annex: Important Issues for Further Community Action</a>	Annex, 1. Pursuant to Section 4.4, continuing community work to develop an accreditation and access model that complies with GDPR, while recognizing the need to obtain additional guidance from Article 29 Working Party/European Data Protection Board.



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