Data protection and criminal justice: what are the issues?

The ICANN perspective

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What is Registration Directory Services (RDS)/WHOIS

Registration Directory Services (RDS) is a publicly available and distributed directory containing information about registered domains such as icann.org

Each registrar and registry operator maintains its own database of registration data and provides access to this data via its own directory service.

Use of Registration Directory Services (RDS)/WHOIS

➤ Initially by Internet operators to contact each other to resolve network problems such as outages, problems with hardware/software.

➤ Over time, RDS has evolved to serve the need of many different stakeholders, such as registrants, law enforcement agents, intellectual property and trademark owners, businesses and individuals

Importance of RDS/WHOIS

➢ The stable operation of the Internet relies on the basic concept that you cannot run a hierarchical and decentralized system like the Internet (a network of networks) if you cannot find the people who operate it to warn of problems and coordinate responses to operational issues.

➢ In addition, the WHOIS system helps serve the public interest as it contributes to the security and stability of the Internet by providing contact information to support issues related to consumer protection, investigation of cybercrime, DNS abuse and intellectual property; as well as to address appropriate law enforcement needs.

Registration Directory Services (RDS)/WHOIS

➢ gTLDs, ccTLDS, RIRs

The GDPR affects ICANN in at least two areas:

- Contracted Parties: Personal data that participants in the domain name ecosystem collect, display, and process, including registries and registrars pursuant to ICANN contracts

- Internal: Personal data that ICANN collects and processes for internal or external services

Temporary Specification for gTLD Registration Data

- ⊙ 17 May 2018: ICANN Board approves [Temporary Specification for gTLD Registration Data](#)
  - ○ Personally identifiable information to be masked in public WHOIS
  - ○ Tiered/layered access to non-public WHOIS data
  - ○ Request to GNSO to begin policy development process for a permanent solution

- ⊙ Given the importance of WHOIS for security and stability of the Internet as well as for the public interest, the goal was to preserve WHOIS to the greatest extent possible while complying with GDPR.

- ⊙ Existing requirements for robust collection of Registration Data was maintained

- ⊙ A tiered/layered access model was adopted to ensure continued access to Registration Data while limiting publication of personal data.

- ⊙ We received input input from the EDPB that any personal data included in the registration data for any registrant, including a legal person, is protected under GDPR. As such, the model does not differentiate between legal and natural person.
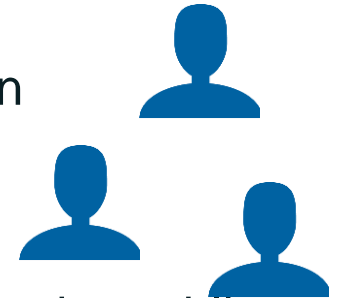
Changes to WHOIS since 25 May 2018

What has not changed?

- Registration Data for all of the applicable fields continue to be collected, transferred, and retained as before.

- Registrars and registry operators are required to continue to escrow Registration Data.

- Existing rules and procedures for rights protection mechanisms and the trademark clearinghouse remain in place.

VS

What has changed?

- Access to Registration Data is tiered/layered. Personal data will be redacted for Registration Data processed in the EU. Third-party with legitimate interest may gain access to non-public Registration Data by contacting the relevant registrar/registry.

- Registrars are requested to provide an anonymized email address or web form to contact registrants, admin and tech contacts.

- All other information for tech and admin contacts are redacted.

WHOIS Before and After 25 May 2018

WHOIS record field	Before 25 May	Current WHOIS
Domain Name	Display	Display
Registry Domain ID	Display	Display
Registrar WHOIS Server	Display	Display
Registrar URL	Display	Display
Updated Date	Display	Display
Creation Date	Display	Display
Registry Expiry Data	Display	Display
Registrar Registration Expiration Date	Display	Display
Registrar	Display	Display
Registrar IANA ID	Display	Display
Registrar Abuse Contact Email	Display	Display
Registrar Abuse Contact Phone	Display	Display

WHOIS Before and After

WHOIS record field	Before 25 May	Current WHOIS
Reseller	Display	Display
Domain Status	Display	Display
Domain Status	Display	Display
Domain Status	Display	Display
Registry Registrant ID	Display	Do not display
Registrant Name	Display	Do not display
Registrant Organization	Display	Display
Registrant Street	Display	Do not display
Registrant City	Display	Do not display
Registrant State/Province	Display	Display
Registrant Postal Code	Display	Do not display
Registrant Country	Display	Display
Registrant Phone	Display	Do not display
Registrant Phone Ext	Display	Do not display

WHOIS Before and After

WHOIS record field	Before 25 May	Current WHOIS
Registrant Fax	Display	Display
Registrant Fax Ext	Display	Display
Registrant Email	Display	Anonymized email or web form
Registry Admin ID	Display	Display
Admin Name	Display	Display
Admin Organization	Display	Display
Admin Street	Display	Display
Admin City	Display	Display
Admin State/Province	Display	Display
Registrant Fax	Display	Display
Registrant Fax Ext	Display	Display
Registrant Email	Display	Display
Registry Admin ID	Display	Display
Admin Name	Display	Display

WHOIS Before and After

WHOIS record field	Before 25 May	Current WHOIS
Admin Organization	Display	Do not display
Admin Street	Display	Do not display
Admin City	Display	Do not display
Admin State/Province	Display	Do not display
Admin Postal Code	Display	Do not display
Admin Country	Display	Do not display
Admin Phone	Display	Do not display
Admin Phone Ext	Display	Do not display
Admin Fax	Display	Do not display
Admin Fax Ext	Display	Do not display
Admin Email	Display	Anonymized email or web form
Registry Tech ID	Display	Do not display
Tech Name	Display	Do not display
Tech Organization	Display	Do not display

WHOIS Before and After

WHOIS record field	Before 25 May	Current WHOIS
Tech Street	Display	Do not display
Tech City	Display	Do not display
Tech State/Province	Display	Do not display
Tech Postal Code	Display	Do not display
Tech Country	Display	Do not display
Tech Phone	Display	Do not display
Tech Phone Ext	Display	Do not display
Tech Fax	Display	Do not display
Tech Fax Ext	Display	Do not display
Tech Email	Display	Anonymized email or web form

WHOIS Before and After

WHOIS record field	Before 25 May	Current WHOIS
Name Server	Display	Display
Name Server	Display	Display
DNSSEC	Display	Display
DNSSEC	Display	Display
URL of ICANN Whois Inaccuracy Complaint Form	Display	Display
>>> Last update of WHOIS database	Display	Display

The community driven bottom-up policy making process

Policy Development Process

⦿ The ICANN Generic Names Supporting Organization initiated an expedited policy development process (EPDP)

➤ EPDP Phase1

➤ EPDP Phase 2

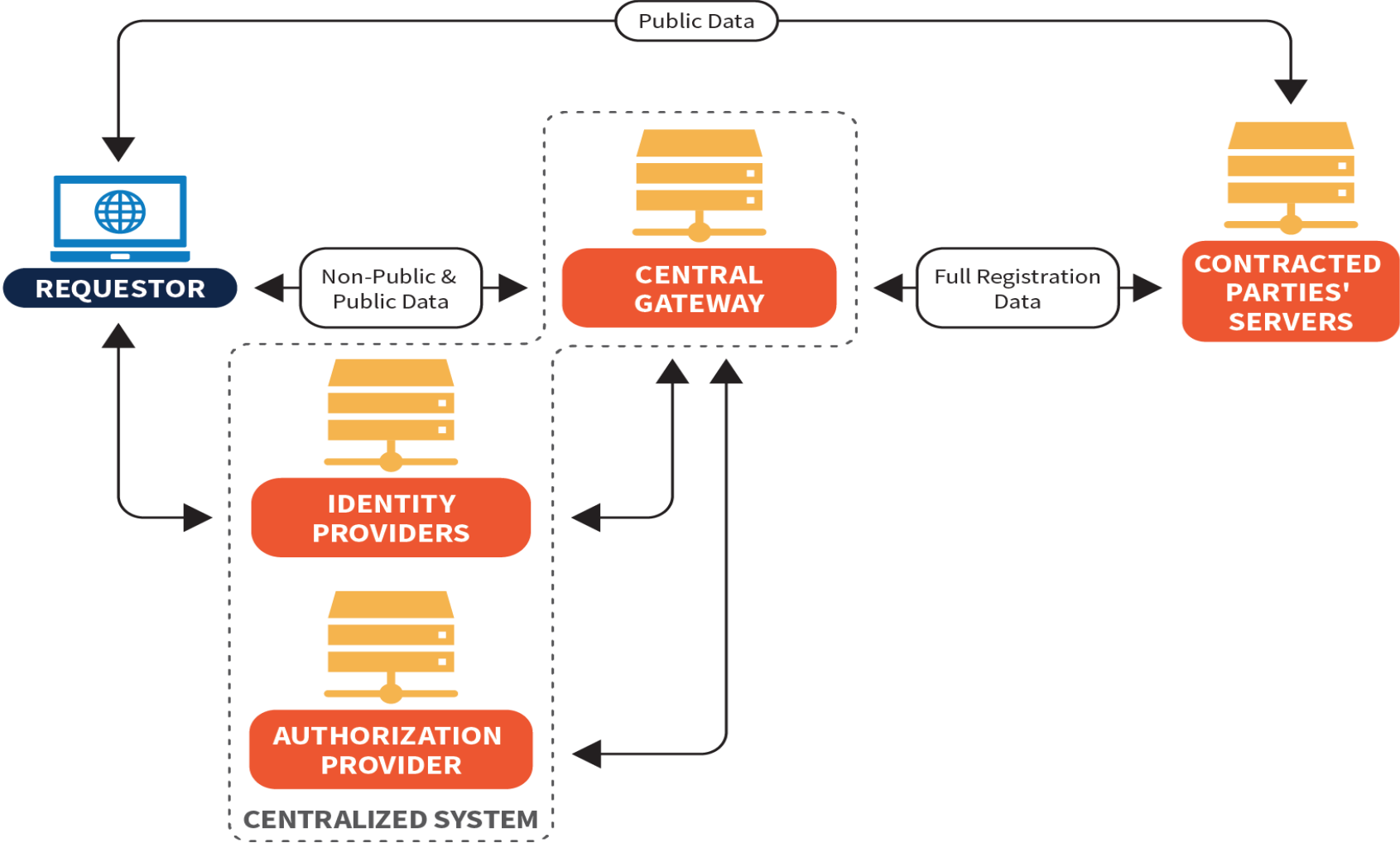# Developing a Standardized System for Access/Disclosure

- EPDP Phase 2 Policy Principles

  '"The objective of the SSAD is to provide a predictable, transparent and accountable mechanism for

  access/disclosure of non-public registration data to third parties with a legitimate interest and a legal basis"

- Exploring a UAM

  - In June 2018, ICANN org published a discussion document titled [Framework Elements for a Unified Access Model for Continued Access to Full WHOIS Data](#). Building on that discussion document as well as various inputs from the community and the European Data Protection Board (EDPB), ICANN org published in August 2018 the [Draft Framework for a Possible Unified Access Model for Continued Access to Full WHOIS Data – For Discussion](#).

  - To address governmental and ICANN community support for exploring such a model, ICANN's CEO then formed a [Technical Study Group](#) (TSG) to explore technical solutions for providing access to non-public registration data. The TSG published "[TSG01, Technical Model for Access to Non-Public Registration Data](#)" on 30 April 2019 and submitted this to the ICANN CEO and President for further consideration. The TSG's [technical model is based](#) on RDAP, the replacement of WHOIS.

  - ICANN org submitted to the European Data Protection Board (EDPB) a paper, "[Exploring a Unified Access Model for gTLD Registration Data](#)," on 25 October 2019, which outlines a proposed Unified Access Model based on the TSG's technical model. The purpose of this work is to seek guidance from the EDPB about whether such a model would be compliant with the framework of the European Union's General Data Protection Regulation.

  - Feedback on the UAM is intended as input to the EPDP Phase 2

Exploring a UAM

Public Data

REQUESTOR

Non-Public & Public Data

CENTRAL GATEWAY

Full Registration Data

CONTRACTED PARTIES' SERVERS

IDENTITY PROVIDERS

AUTHORIZATION PROVIDER

CENTRALIZED SYSTEM

Challenges aside a model for access to non-public reg. data

- ➢ Legal ground for obtaining access from possibly foreign jurisdictions …?

- ➢ Legal ground for transferring data across borders …?

Thank You

All information is available at ICANN's [Data Protection/Privacy Issues page](#)

ICANN org is gathering contributions at gdpr@icann.org