

27 February 2014

Dear Registrar,

I write to provide an update on ICANN's implementation of the data retention and waiver provisions of the 2013 Registrar Accreditation Agreement (RAA).

As you are probably already aware, the 2013 RAA includes a number of new and enhanced requirements for registrars. Among the changes is a new Data Retention Specification, which updates and clarifies the data retention obligations that were included in the 2009 RAA (and previous versions of the RAA). The 2013 RAA generally requires more data elements to be retained by registrars, but for a shorter period of time than the 2009 RAA. (The 2009 RAA required registrars to maintain records on registrations and payments for all registered names for up to 3 years following each registration's deletion or transfer to a different registrar. The 2013 RAA gives additional details on what kinds of data must be kept by the registrar, and divides the data elements into groups that must be kept for either 2 years or 180 days.)

The 2013 RAA data retention requirements were based on recommendations strongly supported by the governments of the world through ICANN's Governmental Advisory Committee. Some registrars expressed concerns, however, that local data protection and other privacy laws might make it difficult for them to comply with these new requirements.

To be very clear, governing laws take precedence over the terms of the 2013 RAA. To wit, all versions of the RAA since 1999 have specified that registrars must abide by applicable laws and governmental regulations. ICANN established a "Procedure For Handling Whois Conflicts with Privacy Law" (<http://www.icann.org/en/resources/registrars/whois-privacy-conflicts-procedure-17jan08-en.htm>) in 2008 to help registrars and registries reconcile conflicts between their local laws and ICANN-imposed obligations related to operation of Whois. The 2013 RAA also includes a provision through which registrars may request a "waiver" of any of the new data retention obligations that are in conflict with their applicable laws.

ICANN posted on its website a process and form for registrars to request data retention waivers (<http://www.icann.org/en/resources/registrars/updates/retention>). After a handful of registrars submitted their requests for waivers, it became clear that, in most of their countries, the privacy laws that were cited as being in conflict with the Data Retention Specification were anything but clear with respect to some of the requirements of the RAA. For example, in the European Union (EU), ICANN understands that registrars may generally collect and retain personal data for legitimate purposes, for a period no longer than is necessary for the purposes for which the data were collected or for which they are further processed. But many countries within the EU seem to interpret what constitutes a legitimate purpose and how long data can be retained a little differently. ICANN understands that there are a number of legitimate reasons for retention of registration data beyond the term of a registration agreement, such as to undo a domain name hijacking, to allow customers to investigate an erroneously billed charge (such as a renewal fee assessed after a name was deleted or transferred), and to resolve

incidents of identity and credit card theft that are discovered after a domain name is deleted. Yet countries may not have published advice or case law on concerns such as these that are somewhat peculiar to the domain name industry.

ICANN has invested a significant amount of time and resources into trying to better understand the impact and consequences of the data privacy laws on the RAA, and we realize that many registrars have done the same with regard to their own jurisdictions. Regrettably, the process has taken longer than any of us would have liked.

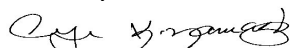
We are working to resolve the waiver requests that have been submitted. One registrar's waiver has been preliminarily granted. (In accordance with the procedure specified in the RAA, it must be posted for 30 days before the waiver approval can become final.) In the other cases, we have engaged and directed our outside legal counsel based in other countries to attempt to negotiate appropriate waivers with the legal counsel for the remaining waiver applicants. We are hopeful that these negotiations will be fruitful and that our learnings through this process will enable us to resolve future waiver requests more expediently.

A number of registrars and other community members have asked about ICANN's plans to update the Procedure For Handling Whois Conflicts with Privacy Law (noted above) to incorporate the Data Retention Specification's waiver process and to harmonize the approach taken in resolving conflicts so that the process is the same for Whois/legal conflicts as it is for data retention/legal conflicts. We are aware of the challenges the existing two-procedure approach might pose and have also heard the suggestion from some registrars that the threshold required to invoke the Whois Conflicts procedure might be too high. In an effort to try to resolve these concerns, ICANN will soon be announcing a public review of the Whois Conflicts procedure, which will incorporate substantial community input. More details about this review will be published in the coming weeks.

ICANN has a long history of compliance with and respecting local laws, and I want you to know that we are very committed to ensuring that data collection and retention requirements are implemented in a manner consistent with such laws. Although we've experienced some challenges in the implementation of the new data retention waiver procedure, we hope you will contribute to the improvement of our waiver procedures as that work gets underway at ICANN.

Please let me know should you have any concerns or questions I can address in the meantime.

Sincerely,



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