

**Noncommercial Stakeholders Group
EPDP Document Repository**

As of 29 July 2018

Legal Analyses

Date	Author	Title and URL
21 December 2017	Hamilton Advokatbyrå	Part 3 (elaborates on how the processing of data within the scope of the present WHOIS could possibly be changed to become compliant with the GDPR)
15 December 2017	Hamilton Advokatbyrå	Part 2 (addressed questions that the ICANN community had raised)
29 October 2017	Taylor Wessing	“Independent” Analysis Commissioned by the Intellectual Property Constituency of the Impact of the GDPR on WHOIS
16 October 2017	Hamilton Advokatbyrå	Part 1 (described the potential issues that could arise vis a vis WHOIS service in its current form and the GDPR)
25 September 2017	Wilson Sonsini Goodrich & Rosati, LLP	Response to written RDS PDP WG questions
7 April 2017	Council of Europe	Response to written RDS PDP WG questions ahead of Copenhagen meeting

NCSG Objections to the EPDP Scope

Abstentions during 19 July 2018 Council Meeting

- [Ayden Férdeline](#)
- [Stephanie Perrin](#)
- [Tatiana Tropina](#)

Mailing list objections

- [Ayden Férdeline](#), 16 July 2018 - *“I do not support the inclusion of Section J) in the EPDP's scope for two reasons...”*

- [Stephanie Perrin](#), 16 July 2018 - *“there is a price to be paid for not recognizing the reality of data protection law, and refusing to move in time. We are now behind the proverbial 8-ball. That does not mean we can pull off a miracle here.”*
- [Stephanie Perrin](#), 17 July 2018 - *“The purpose of a well scoped Charter and set of deliverables is to make the task of the working group clear and simple. I humbly submit, for the record, that we have left a number of vague terms and timing criteria in there, and it may cause problems later. A stitch in time saves nine, as the old proverb says.”*

Interventions of Data Commissioners in relation to Registrant Data

Date	Author	Title and URL	Key Issues Raised	ICANN Reply and URL
1998	Berlin Group	Common Position on Reverse Directories	Consent and transparency required Referenced in Art 29 comments	None
2000	Article 29	The Use of Public Directories for Reverse or Multi-Criteria Searching Services	New purpose not compatible with original Data minimization per 95/46/EC, consent, prevention of bulk processing	None
2000	Berlin Group	Common Position on Privacy and Data Protection Aspects of the Registration of Domain Names on the Internet	State purpose, restrict data published, restrict marketing, and secondary use	None
2000	Berlin Group	Ten commandments for privacy on the Internet	Virtual right to be let alone restricts directory listings	None

			Right to review by DPA with transborder authority	
2001	Article 29	Comments to European Commission on WHOIS	EC requested comments on WIPO issues and WHOIS	None
2003	EC DG15	Comments on WHOIS	Notes reverse directories, defines purpose, proportionality	None
2003	Berlin Group	Letter to ICANN regarding Names Council WHOIS Task Force	Notes earlier interventions, defines purpose, objection to searching by name	None
2003	Article 29	Opinion 2/2003 on WHOIS	Summary of views expressed so far; response to WHOIS task force	None
2005	Berlin Group	Letter to International Working Group on Internet Governance to express interest in cooperation	Explains who they are & their interest in co-operation	None
2006	Article 29	Letter to ICANN 22/06 Schaar to Cerf WHOIS discussions	Notes ongoing discussion; Purpose not defined, data must be limited; Notes IWGDPT and Art 29 WHOIS papers	Cerf to Schaar 27/06
2007	Article 29	Letter to ICANN	Expresses same	Cerf to Schaar

		12/03 Schaar to Cerf re WHOIS Task Force	concerns as earlier Notes concern with WHOIS conflicts with law policy	15/03
2013	Article 29	Letter to ICANN Kohnstamm to Crocker re 2013 RAA & waivers	All 27 data commissioners agree that their registrars will require a waiver of RAA requirements	Jeffrey to Kohnstamm advice not corresponding to policy requirements
2014	Article 29	Letter to ICANN Kohnstamm to Jeffrey re their status and 2013 RAA	Reaffirms that Article 29 group has authority; all Data Protection Authorities represented and can sign	Namazi to Kohnstamm Purposes differ by country
2013	EDPS	Letter to ICANN 17/04 Hustinx to Jeffrey regarding data retention consultation and recent decision of EC	Data retention practices required by RAA are not in compliance with E.U. Charter of Rights	None
2015	Australian DPA	Letter to PPSAI policy staff regarding call for comments on PPSAI interim report	Do not attempt to deny PP services to users who do financial transactions on web	None
2017	Dutch Data Protection Authority	Letter to ICANN	The unlimited publication of WHOIS-data of domain name registrants by Dutch registries is a violation of	None

			current Dutch privacy law	
2017	Article 29	Letter dated 6 December	Outlines basic principles of data protection law	CEO responds seeking clarification on 15 January 2018
2017	Berlin Group	Working Paper on Privacy and Data Protection Issues with Regard to Registrant data and the WHOIS Directory at ICANN		None
2018	Article 29	Response to 15 January letter, sent 11 April	Endorses recent Berlin Group paper	CEO sends a lengthy list of requests to Article 29
2018	European Data Protection Board	Responding to CEO's list of questions		None
2018	European Data Protection Board	Public Statement Endorsing the Opinions of Article 29 WP		N/A

This table was extracted in large part from work by Dr Stephanie Perrin.

Past WHOIS Reviews and Relevant Policy Development Activities

Year	Name	Result	URL to Final Report
1999	First Registrars Accreditation Agreement	Requires WHOIS data and access; Registrars pay	November 1999
1999	WIPO Internet Domain Name Process	Recommends contacts made public	Final Report
2000	WHOIS Committee convened	Registrar competition issues	N/A

		addressed	
2001	WHOIS Committee recommends standardizing output	Uniformity issues arise	March 2001 Recommendations
2001	Second Registrar Accreditation Agreement	Increased emphasis on accuracy of data, compliance, fees increased	Version ultimately approved in 2013
2001-2003	First WHOIS Taskforce	Data marketing restriction policy	N/A
2003	Second WHOIS Taskforce	Privacy issues debated	N/A
2005	GNSO Council passes the 'WHOIS Conflicts with Law' Procedure	Procedure recommended to deal with data protection law requirements	2005 Procedure
2006	Preliminary Task Force report on the purpose of WHOIS and WHOIS contacts	Narrow, technical definition of purpose of WHOIS	Preliminary Report (January 2006)
2006	American Intellectual Property Law Association sends intimidating letter	Convinced GNSO Council Chair Bruce Tonkin to sell out the NCUC	Dropbox link (please upload to wiki)
2007	Final Task Force report	Operational point of contact proposal, no consensus, GAC principles introduced	Final Report (March 2007)
2007	GNSO Council creates new WHOIS Working Group	Focus on which data elements should be public to respond to GAC	N/A
2008	WHOIS study group forms	Focus on what issues needed independent study, no consensus	Report (August 2008)
2010-2012	WHOIS Policy Review Team	16 recommendations, 1 item with consensus, Privacy/Proxy accreditation	Final Report (May 2012)
2011-2013	Thick WHOIS PDP		Final Report (October 2013)

2012-2014	Four WHOIS studies		Misuse (March 2014) Registrant ID (June 2013) Privacy/Proxy Services Abuse (March 2014) Privacy/Proxy Relay and Reveal (August 2012)
2012	Expert Working Group on RDS		Final Report (June 2014) , note in particular the dissent by Stephanie Perrin
2014-2015	Privacy/Proxy Services Accreditation Issues Policy Development Process		Final Report (December 2015)
2016-2018	RDS PDP WG	WG suspended, no outcomes or report	N/A
2017	Updated WHOIS Conflicts with Law Procedure		New Procedure
2017-2018	RDS2 Review Team	Initial Report forthcoming	N/A
2018	Temporary Specification for gTLD Registration Data		17 May 2018

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NCSG Correspondence

Outgoing Correspondence from the NCSG

Document	Document Type	Date of Publication	URL
Privacy Issues Update by Dr Stephanie Perrin - April 2018	Briefing Note	11 April 2018	https://community.icann.org/display/gns-ononcomstake/NCSG+Positions+on+Whois+Compliance+with+GDPR?preview=/83329642/84216933/Lettter%20to%20WP29%20-NCSG-ICANN-WHOIS%20(1).pdf
Comments of the NCSG on the Draft IPC/BC Purpose Statement Published on 27 March 2018	Letter	9 April 2018	https://www.icann.org/en/system/files/files/gdpr-comments-ncsg-accreditation-access-non-public-whois-data-09apr18-en.pdf
Statement of the NCSG on the 8 March 2018 Model for GDPR Compliance	Letter	11 March 2018	https://www.icann.org/en/system/files/files/gdpr-comments-ncsg-icann-proposed-compliance-models-11mar18-en.pdf
Berlin Group Working Paper on Privacy and Data Protection Issues with Regard to Registrant Data and the WHOIS Directory at ICANN	Working Paper	9 March 2018	https://www.datenschutzhutz-berlin.de/pdf/publikationen/working-paper/2017/2017-IWGDPT_Working_Paper_Firmware_Updates-en.pdf
Letter to the Article 29 Data Protection Working Party	Letter	5 March 2018	https://www.icann.org/en/system/files/files/gdpr-comments-ncsg-article-29-wp-non-compliance-05mar1

			8-en.pdf
NCSG Input on Proposed Compliance Models	Letter	29 January 2018	https://www.icann.org/en/system/files/files/gdpr-comments-ncsg-icann-proposed-compliance-models-29jan18-en.pdf
Personal Comments of Dr Stephanie Perrin on GDPR Interim Compliance Models for WHOIS and Associated Privacy Compliance Issues	Letter	29 January 2018	https://www.icann.org/en/system/files/files/gdpr-comments-perrin-icann-proposed-compliance-community-submitted-models-29jan18-en.pdf
Analysis by Dr Stephanie Perrin of the International Working Group on Data Protection in Telecommunications 62nd Meeting in Paris	Blog Post	8 December 2017	https://www.ncuc.org/2017/12/08/international-working-group-on-data-protection-in-telecommunications-62nd-meeting/
Letter to Theresa Swinehart and Akram Atallah Regarding ICANN's Non-Compliance with European Data Protection Law	Letter	19 October 2017	https://www.icann.org/en/system/files/correspondence/dammak-to-swinehart-atallah-19oct17-en.pdf
Update by Dr Stephanie Perrin on ICANN Data Protection Issues: Will there be Enforcement of Data Protection Law in the Future?	Blog Post	6 February 2017	https://www.ncuc.org/2017/02/06/update-on-icann-data-protection-issues-will-there-be-enforcement-of-data-protection-law-in-the-future/

Incoming Correspondence to the NCSG

Document	Document Type	Date of Publication	URL
Letter to the NCSG from the Article 29 Data Protection Working Party	Letter	12 April 2018	https://community.icann.org/display/gns-ononcomstake/NCSG+Positions+on+Whois+Compliance+with+GDPR?preview=/83329642/84214960/ICANN%20letter%20on%20commercial%20stakeholders%5B18323%5D.pdf
Letter to the NCSG from Theresa Swinehart and Akram Atallah Regarding ICANN's Non-Compliance with European Data Protection Law	Letter	27 November 2017	https://www.icann.org/en/system/files/correspondence/atallah-swinehart-to-dammak-27nov17-en.pdf

Security and Stability Advisory Committee Reports

Advice Number	Date of Advice	Title	URL
SAC 023	23 October 2007	Is the WHOIS Service a Source for email Addresses for Spammers?	
SAC 027	7 February 2008	SSAC Comment to GNSO regarding WHOIS studies	
SAC 033	20 June 2008	Domain Name Registration Information and Directory Services	
SAC 037	21 April 2009	Display and usage of Internationalized Registration Data: Support for characters from local languages or scripts	

SAC 038	25 February 2009	Registrar Abuse Point of Contact	
SAC 051	19 September 2011	SSAC Report on WHOIS Terminology and Structure	
SAC 054	11 June 2012	SSAC Report on the Domain Name Registration Data Model	
SAC 055	14 September 2012	SAC Comment on the WHOIS Review Team Final Report	
SAC 058	27 March 2013	SSAC Report on Domain Name Registration Data Validation	
SAC 061	06 September 2013	SSAC Comment on ICANN's Initial Report from the Expert Working Group on gTLD Directory Services	
SAC 081	25 May 2016	SSAC Response to Request for Input on Next Generation gTLD RDS to Replace WHOIS Policy Development Process (PDP)	
SAC 083	11 July 2016	SSAC Comment on Proposed Amendments to New gTLD Registry Agreement	
SAC 087	19 October 2016	SSAC Response to the GNSO Policy Development Process (PDP) Working Group on Next Generation gTLD Registration Directory Services – Second Outreach	

SAC 101	14 June 2018	SSAC Advisory Regarding Access to Domain Name Registration Data	
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(Please get links for SSAC reports here: <https://www.icann.org/groups/ssac/documents>)

Documented Instances of WHOIS Records Being Used to Intimidate Others

- Letter from the Association for Progressive Communications ([29 January 2018](#)) - *“These are not just hypothetical or trivial risks. An APC staff member whose address was included in the WHOIS database received a death threat directed at herself and her family in the early 2000s as a result of a website at a subdomain of APC.org. The site reflected political views which the person who made the death threat did not agree with.”*
- Series of tweets by Japleen Pasricha ([14 October 2017](#)) - The website Feminism in India “published an article criticising Hindu festivals & how they are misogynist for women.” They advise that “some troll ran a <http://whois.com> check on FII's domain and found [the domain name registrant's] name, home add & mobile no. This started a barrage of Islamophobic tweets & an innocent person suffering & being doxxed. Horrible horrible situation.” They were not aware that this data was public.