

8 March 2018

Mr Akram Atallah
President, Global Domains Division, ICANN

Re: GDPR Impact on Domain Name Transfers and Registrant Contact Changes

Dear Mr Atallah

The ICANN Generic Names Supporting Organization Contracted Party House formed the TechOps subcommittee in September 2017 to address technical and operational issues facing ICANN accredited registries and registrars.

This subcommittee was asked by the Chairs of the Registry and Registrar Stakeholder Group to provide a statement on how the European Union General Data Protection Regulation (GDPR)¹ may affect domain name transfers under the current ICANN transfer policy from a technical and operational point of view. The subcommittee was asked to provide a recommendation on how to preserve domain name transfers under the current policies, with the fewest possible changes to ensure implementation ahead of the law's enforcement date of 25 May 2018. Furthermore, the subcommittee was also asked to consider how transfers could be handled in the long-term in a manner that provides choice and frictionless experiences for the registrant, while still maintaining the need for security and privacy in respect of policies or compliance with law.

Without question, domain name transfers will be significantly affected by GDPR, especially in light of ICANN's recently proposed Interim Model for GDPR Compliance (Interim Model)². The current ICANN transfer policy³ requires the gaining registrar to send a standardised form of authorisation (FOA) to the registrant or admin email address - that party is then required to take affirmative action and the involved registrars maintain a record of response. However, because the gaining registrar does not have the record of current registrant information at the time of transfer, it will typically pull it from the public WHOIS output (at the time of the transfer request, and prior to initiating a transfer request at the registry). The Interim Model does not make available the registrant's email address through public WHOIS

¹ <http://eur-lex.europa.eu/eli/reg/2016/679/oj>

² <https://www.icann.org/resources/files/1213443-2018-02-28-en>

³ <https://www.icann.org/resources/pages/transfer-policy-2016-06-01-en>

- leaving the gaining registrar unable to send the FOA through the usual means. Alternative options for transmitting authorisations, such as via fax or postal mail, are much less efficient and secure, and also raise potential issues under GDPR (not to mention the adverse effect on the timeliness and predictability of domain transfers).

Longer-term solutions, like a transition to the Registration Data Access Protocol (RDAP)⁴ or - as proposed in ICANN's recently Interim Model - a registrar IP address whitelisted WHOIS based gated-access system for the provision of registration data (in which registrars were a class of authorised requestors) might be possible, yet these will not be universally implemented across registries and registrars by the GDPR deadline of 25 May 2018.

Therefore, an interim transfer solution is necessary to ensure that domain name transfers will still be able to proceed when GDPR comes into effect.

Any large changes to process will require a reasonable amount of lead time to be implemented, especially where technical development may be required on the part of registries and registrars. Such changes have costs and require quality assurance and planning for how they impact the overall systems at registries and registrars in order to assure reliable, stable, and secure operation.

In addition to the impact to registrars and registries, such system changes could also be disruptive to registrants, internet users, and commercial websites of scale, especially if done incorrectly and in haste.

As a consequence, we suggest that, until a long-term solution can be planned, universally implemented and tested, the following changes be made in order to minimise the impacts and potential for harm.

1: Transitional, the EPP authorisation code should be considered as a sufficient authorisation in regards to the Inter-Registrar Transfer Policy (IRTP)

Obtaining a transfer authorisation via one of the methods of FOA for the gaining registrar should be treated as optional instead of a requirement as it now exists. Instead, the gaining registrar will need to rely on the EPP authorisation code provided to them by the registrant as authorisation to initiate a transfer with the registry.

⁴ <https://www.icann.org/rdap>

As the losing registrar will already be in possession of the registrant's email address, FOAs from the losing registrar can continue as normal. The 5-day window of opportunity to cancel a transfer request, identified in ICANN transfer policy section I. A. 3.7ff, remains unaffected.

However, we suggest that "No response from the Registered Name Holder or Administrative Contact", as defined in the ICANN transfer policy section I. A. 3.9.2, will be a valid reason for the registrar of the record to deny a transfer.

2: Revoke change of registrant procedure and have gaining registrar instead process registrant verification on each completed inbound transfer

In addition to the FOA requirements for Inter-Registrar Transfers, the current ICANN transfer policy has special provisions on changes of registrants after a transfer occurs. Those provisions would apply for any material change to the registrant entity that occurs immediately after the inter-registrar transfer. Today, a gaining registrar would use the public WHOIS to determine if the registrant contact details provided initially to initiate the transfer constitute a material change from the registrant contact prior to the transfer. Without access to WHOIS as a source of current registrant information, it may not be possible for the gaining registrar to determine whether a material change is taking place as part of the transfer. In this interim model, we are suggesting that the gaining registrar would treat every completed transfer like a new registration in the sense that upon completion of a transfer, the registrant needs to go through the registrant verification process as per the WHOIS Accuracy Specification of the 2013 RRA⁵, and for this to occur instead of the change of registrant procedure as per the transfer policy.

We believe that these adaptive changes to the implementation of the current transfer policy will ensure that the integrity of domain name transfers will be preserved after GDPR comes into effect, while respectfully reducing the number of changes to a minimum and making them changes that retain validation and protection steps. We seek clarification with ICANN staff in a timely manner on whether this interim model is acceptable or otherwise to provide guidance on how to preserve the security and stability of domain name transfers under the current policies, in light of the imminent timeframes for ensuring GDPR compliance and the likely changes to WHOIS data availability that may result.

⁵ <https://www.icann.org/resources/pages/approved-with-specs-2013-09-17-en#whois-accuracy>

Yours sincerely

Tobias Sattler
Co-Chair, CPH TechOps
Vice Chair, RrSG

cc:

- Mr John Jeffrey, General Counsel & Secretary ICANN
- Mr Cyrus Namazi, Vice President DNS & Industry Engagement GDD ICANN
- Mr Paul Diaz, Chair RySG
- Mr Graeme Bunton, Chair RrSG
- Ms Sue Schuler, RySG Secretariat
- Ms Zoe Bonython, RrSG Secretariat