

ARTICLE 29 Data Protection Working Party



Brussels, 8 January 2014

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Dear Mr Jeffrey,

Thank you for your letter of 20 September 2013¹ regarding ICANN's 2013 Registrar Accreditation Agreement² (2013 RAA).

The Working Party acknowledges ICANN's efforts to recognise some of the data protection and privacy concerns which arise in the 2013 RAA and for your continued dialogue in this matter. The 2013 RAA approved by the ICANN Board on 27 June 2013 however does not contain any material changes which address the concerns described in our letter of 6 June 2013 and thus the Working Party is compelled to continue this discussion.

The Working Party notes that since our letter of 6 June 2013 ICANN has published further documentation regarding the specific requirements for invoking the Waiver procedure³. As described in our earlier letter, the purpose is to provide a unified form of written guidance from each of the 28 national data protection authorities in Europe and the European Data Protection Supervisor. This provides a single statement for all relevant registrars targeting individual domain name holders in Europe.

The Working Party regrets that ICANN does not acknowledge⁴ our correspondence as written guidance to support the Waiver application of a Registrar operating in Europe.

Providing a single form of written guidance simplifies the ICANN Process for Handling Registrar Data Retention Waiver Requests⁵. As stated under Sections 3a and 3c, where an identical request was approved or under review the RR team member will proceed or consider combining the Waiver requests. Each Registrar operating within the Member States of the European Union is subject to the European Data Protection

¹ <http://www.icann.org/en/news/correspondence/jeffrey-to-kohnstamm-20sep13-en>

² <http://www.icann.org/en/resources/registrars/raa/approved-with-specs-27jun13-en.htm>

³ <http://www.icann.org/en/resources/registrars/updates/retention>

⁴ <http://durban47.icann.org/meetings/durban2013/transcript-gac-new-gtld-13jul13-en.pdf>

⁵ <http://www.icann.org/en/resources/registrars/updates/retention/waiver-request-process>

This Working Party was set up under Article 29 of Directive 95/46/EC. It is an independent European advisory body on data protection and privacy. Its tasks are described in Article 30 of Directive 95/46/EC and Article 15 of Directive 2002/58/EC.

The secretariat is provided by Directorate C (Fundamental rights and Union citizenship) of the European Commission, Directorate General Justice, Freedom and Security, B-1049 Brussels, Belgium, Office No MO59 02/34

Website: http://ec.europa.eu/justice_home/fsj/privacy/index_en.htm

Directive 95/46/EC⁶ and therefore each Waiver Request could be considered by ICANN as an identical request rather than process each individually.

The Working Party's objection to the Data Retention Requirement in the 2013 RAA arises because the requirement is not compatible with Article 6(e) of the European Data Protection Directive 95/46/EC which states that personal data must be:

“kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data were collected”

The 2013 RAA fails to specify a legitimate purpose which is compatible with the purpose for which the data was collected, for the retention of personal data of a period of two years after the life of a domain registration or six months from the relevant transaction respectively.

In order to support Registrars operating within the jurisdiction of the European Data Protection Directive 95/46/EC, the Working Party would request that ICANN accepts the Working Party's position as appropriate written guidance which can accompany a Registrar's Data Retention Waiver Request.

The Article 29 Working Party on the Protection of Individuals with regard to the Processing of Personal Data is an independent advisory body on data protection, set up under Article 29 of the EU Data Protection Directive 95/46/EC. The Chair of the Working Party is elected by its members, representatives from each of the national data protection authorities of the EU Member States and the European Data Protection Supervisor. The Article 29 Working Party is competent to examine any question covering the application of the data protection Directives in order to contribute to the uniform application of the Directives.

However, for the avoidance of doubt I can confirm that each of the Data Protection Commissioners in the 28 EU member states was either represented at the meeting of the Working Party on 4 December 2013 and independently endorsed the contents of this letter, confirming that it reflects the legal position in their member state or has been contacted following the meeting on 4 December 2013 and had so confirmed.

Yours sincerely,

On behalf of the Article 29 Working Party,

Jacob Kohnstamm
Chairman

⁶ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31995L0046:en:HTML>