

Human Rights Gap Analysis for ICANN's Registration Data Consensus Policy for gTLDs

Final Report

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Acknowledgements

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About the CCWP-HR

The CCWP-HR is a multistakeholder forum currently chartered as a sub-entity of the Non-Commercial Stakeholder Group (NCSG) within the Generic Name Supporting Organisation (GNSO) but remains open to the rest of the Internet Corporation for Assigned Names and Numbers (ICANN) community for research and discussion on the relationship between human rights and global Domain Name System (DNS) coordination. This is related — but not limited — to policies, procedures, and operations, with a particular focus on ICANN's responsibility to respect human rights. The primary goal of the CCWP-HR is to provide information, facilitate dialogue, and make suggestions to ICANN Org, its Board of Directors, and the ICANN community on ways to better harmonize ICANN's policies and procedures with internationally recognized human rights laws and corporate social responsibility standards. Membership is open to any interested individual, regardless of affiliation.

About the Authors

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Introduction

In August 2022, ICANN published its Draft Registration Data Policy, requesting feedback from the community. We note that ICANN published the Draft Registration Data Policy as an outcome of the work of the Implementation Review Team (IRT) to develop an implementation plan in line with the Consensus Policy Implementation Framework (CPIF), which was previously developed by ICANN and adopted by the GNSO Council.

We welcome the work of ICANN to release the document in line with Workstream 2 Recommendations on ICANN Transparency. Our analysis shows that, primarily, the document is a good first step but has fundamental gaps in ensuring the full implementation of Section 27.2 of the ICANN Bylaws (on Human Rights) and other Bylaws with an impact on human rights.

CCWP-HR therefore urges ICANN to implement the recommendations below, which would ensure that the Draft Registration Data Policy is implemented more closely with international law and best practice.

Comments on the lack of clear timelines

The draft policy states that the effective date of the policy shall be “no later than [540 days after the date of policy announcement and legal notice for implementation]”. However, the call for public comment that accompanies the draft Policy states: “after the implementation plan has been finalized, ICANN's Contracted Parties will be notified of the implementation and compliance deadlines.” We recommend that the language in both documents be changed to either specify an exact date or ensure that the language is consistent, so that all stakeholders have clarity and legal certainty.

Given that the draft policy aims to further enhance the privacy of registrants, we recommend that the deadline for compliance be made as soon as practicable (preferably within the first 6 months), as any further delay in securing the rights to privacy of registrants puts their data at risk.

Comments on the requirements for Data Protection Agreements

We welcome the requirement that “ICANN, gTLD Registry Operators, and accredited Registrars **MUST** enter into required data protection agreements with each other and with relevant third party providers contemplated under this Policy where applicable law requires. The terms may include legal bases for processing Registration Data.”

We recommend that the requirement be made more robust to additionally include mandates on ICANN, gTLD registry operators and accredited registrars

to conduct full human rights impact assessments (HRIAs) or data protection impact assessments (DPIAs), carried out by independent experts, within one year after the compliance deadline and at least every two years thereafter.

HRIAs and DPIAs are activities that include engaging in consultation with both internal and external stakeholders of an entity. This is done so that the entity can accurately determine the potential and actual effects of their corporate policies, practices, products, and services on human rights and data protection, respectively, and then take steps to lessen the effects of any adverse effects.

The HRIA has been acknowledged by ICANN itself as a methodology through which it can comply with its commitments as outlined in Section 27.2 of the ICANN Bylaws (on human rights) as well as in the Framework Of Interpretation for Human Rights (FOI-HR)¹.

Under the United Nations Guiding Principles (UNGPs) on Business and Human Rights, companies including ICANN, gTLD registry operators and accredited registrars are responsible for respecting the human rights of their stakeholders and customers. Conducting HRIAs and DPIAs will ensure that these companies are not only in compliance with international human rights standards and principles, but also with their national and regional obligations, such as those under the European Union General Data Protection Regulations (GDPR).

Comments on the requirements for Collection of Registration Data

Under Section 6.7 and the Implementation Notes of the draft policy, there is leeway for gTLD registry operators, and accredited registrars to a) collect data in addition to the data provided for under the draft policy and b) process data for purposes that are beyond the scope of this draft policy.

We recommend that these sections be redrafted to require ICANN registries and gTLD registry operators to a) obtain the express consent of Registrants before the collection of data and b) clearly inform registrants of what data is required and not required to be collected under this draft policy, *prior* to obtaining registrant consent to collection.

Comments on the requirements for deletion of administrative contact data

We welcome the recommendation, which allows gTLD registry operators and accredited registrars to delete administrative contact data that was collected

¹ The Framework Of Interpretation for Human Rights (FOI-HR) was developed through a multistakeholder process as a consensus recommendation and approved by the ICANN Board in November 2019 at ICANN 66 in Montreal, Canada
<<https://www.icann.org/en/system/files/files/ccwg-acct-ws2-final-24jun18-en.pdf>> accessed 7 October 2022

prior to the publication of the draft Data Consensus Policy, but note that the drafting makes it optional by the use of “MAY” instead of “MUST”. We therefore recommend that this be redrafted to make it mandatory, unless the express, informed consent of the Registrant is provided or in the case of ongoing law enforcement processes at the time of the policy's publication.

Comments on Disclosure Requests

We welcome this section, as it requires that, when providing responses to disclosure requests, gTLD registry operators and accredited registrars responses must provide an explanation of how the fundamental rights and freedoms of the data subject were weighed against the legitimate interest of the requestor (if applicable).

However, this provision applies as a response to a third-party requester for data and does not clearly allow for the involvement of registrants in decisions involving their data. The lack of provisions for notifying registrants when requests to access their registration data are made undermines their ability to challenge these requests. As such, this mechanism does not adequately balance the needs of a third-party requester for access to information with registrants' rights to privacy and data protection.

To ensure compliance with the principles of necessity, proportionality, and the requirement for due process under the international human rights framework, we advise that users and registrants be provided with an independent mechanism to appeal requests *before* their registration data is disclosed to third-party requesters.

Conclusion

CCWP-HR is grateful to have participated in this public comment process in accordance with the November 2019 ICANN Board approval of the FOI-HR.

We welcome feedback on any aspect of this initiative and extend an open invitation to any interested individuals to get involved in the next phase of work. To become a member of the Cross-Community Working Party on ICANN and Human Rights (CCWP-HR), visit [the CCWP-HR page](#) on the ICANN Community website.