



## The Internet Corporation for Assigned Names and Numbers

October 9, 2012

Mr. Jakob Kohnstamm  
Chairman of Article 29 Working Party  
European Commission

Re: **Comments on the data protection impact of the revision of the ICANN RAA concerning accuracy and data retention of WHOIS data**

Dear Chairman Kohnstamm,

Thank you for your letter dated 26 September 2012 regarding data privacy concerns arising out of the RAA-related proposals on WHOIS verification and data retention. ICANN welcomes the contributions of the EU Article 29 Working Party to the ongoing discourse on these important revisions to the Registrar Accreditation Agreement (RAA).

ICANN recognizes that data protection laws and regulations vary from jurisdiction to jurisdiction. Please be assured that ICANN fully expects its registrars to comply with applicable laws (including applicable data protection laws), and that ICANN is actively analyzing the issue of varying legal requirements in connection with the RAA negotiations.

Specifically, the issues you raise are to be explored with ICANN's Government Advisory Committee (GAC) in Toronto next week. As you note in your letter, the GAC has endorsed the WHOIS and data retention requests that stem from recommendations made by law enforcement representatives from across the globe, including the European Union. In the ICANN meeting in Prague in June 2012, the GAC stated that it is uniquely qualified to provide guidance to ICANN as it attempts to balance the issues of privacy concerns versus the needs of law enforcement. As a result, ICANN has solicited information from the GAC on establishing an appropriate procedure for registrars to request exemptions.

In ICANN's consultations with the GAC, ICANN proposes to adapt the current *ICANN Procedure for Handling Whois Conflicts with Privacy Law*, to enable registrars to seek an exemption from these new RAA WHOIS and data protection obligations in the event that the obligations would cause registrars to violate their local laws and regulations. Since the European Commission is a member of the GAC, we encourage the Article 29 Working Party to coordinate with the Commission's GAC representative to influence the GAC's guidance to ICANN on this important topic. The Article 29 Working Party's expertise in this regard would be extremely useful in designing a process that could be applicable to European registrars.

Thank you for your interest in this important project for ICANN. ICANN has undertaken this comprehensive effort to improve the RAA to further the twin goals of Internet security and registrant protection. This project was commenced in response to calls for reform from across ICANN's multi-stakeholder structure. We hope that the Article 29 Working Party agrees with these goals, and will ultimately be supportive of the RAA that emerges from these negotiations.

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Please do not hesitate to contact me if you have further questions on these matters. ICANN's Vice President for Europe, Mr. Nigel Hickson, is also available to meet or speak on these issues at your convenience. He can be reached at [nigel.hickson@icann.org](mailto:nigel.hickson@icann.org).

Best regards,

A handwritten signature in black ink, appearing to read "Fadi Chehadé", written over a horizontal line.

Fadi Chehadé  
President and CEO, ICANN