

Area 2: Compliance with data protection laws and Registrar Accreditation Agreement

Study Submission	Testable Hypothesis / Hypotheses
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<p>Study Submission # 23: [submitted by Kathy Kleiman] Conduct a legal comparison of national data protection laws to determine legal requirements relevant to the protection of registrant information.</p>	<p>Some national data protection laws explicitly apply, or have been adjudicated to apply, to information submitted by gTLD registrants and made available via Whois.</p>
<p>Study Submission # 24: [submitted by Claudio DiGangi, INTA] Obtain a representative sample of registrars' terms and conditions to determine what percentage of sampled registrars is appropriately obtaining agreement to all of the terms required under Section 3.7.7 of the RAA.</p>	<p>[Many] [Some] Registrars are not obtaining agreement to terms required under section 3.7.7 of the RAA.</p> <p>(a)</p>
<p>GAC recommendation #12: Since gTLD registries and registrars conduct business globally, which laws in which jurisdiction appropriately apply to their transactions and in particular to their WHOIS contractual obligations?</p>	<p>As reported by gTLD registries or registrars, as reflected in their contractual documents, or as adjudicated in relevant tribunals, the WHOIS contractual obligations of gTLD registries and registrars are governed by:</p> <ul style="list-style-type: none"> • (a) the laws of their local jurisdiction, or • (b) the laws of the jurisdictions of their Registrants, or • (c) the laws of ICANN's domicile (California, U.S.), or • (d) some other jurisdiction.
<p>GAC recommendation #13: What are the legal jurisdictional issues raised by gTLD registries and registrars that adhere to local law applicable to domain name registrations and WHOIS requirements, but may then be in contravention to other legal jurisdictions where they conduct business?</p>	<p>Those gTLD registries or registrars in category (a) under GAC #12 provide a contractual mechanism (or have had a mechanism imposed upon them by law or tribunal decision) to resolve any conflicts between the law applicable to their WHOIS requirements and the law of any other jurisdiction.</p>
<p>GAC recommendation #14: May a gTLD domain name registrant who is a legal resident of one country apply for a domain name in another and claim to be under the legal jurisdiction of the latter and not the former?</p>	<p>[Encompassed in #12; i.e., does outcome (a) or (b) under #12 apply?]</p>
<p>GAC recommendation #15: How</p>	<p>(a)</p>

- editor 7/17/08 10:31 AM

Deleted: ICANN WHOIS policies should reflect national data protection laws, [particularly in areas determined to have an impact on human rights issues.]
- Patrick Jones 7/21/08 3:17 PM

Comment: What is the intention of the words "or have been adjudicated to apply"? Is it intended to mean only in those cases where a national government/data protection authority/court has said data protection laws apply?
- editor 7/17/08 10:32 AM

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- editor 7/17/08 10:31 AM

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- editor 7/17/08 10:32 AM

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- Patrick Jones 7/21/08 3:26 PM

Comment: I don't understand the intention of the words here. Is it only as decided by a national government/data protection authority/court? What about instances where a data protection law exists but a data protection authority has not issued a formal "opinion"?
- editor 7/17/08 10:34 AM

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- Patrick Jones 7/21/08 3:27 PM

Comment: Again, I don't understand the inclusion of the words "tribunal decision"
- editor 7/17/08 10:38 AM

Deleted: A gTLD Registry or Registrar, by fulfilling their legal and contractual obligations as pertaining to domain registrations and WHOIS requirements, may be subject to conflicting laws in other jurisdictions in which they conduct business.
- editor 7/17/08 10:38 AM

Deleted: Jurisdiction [concerning data protection law] is established by the territory containing the gTLD registry and/or ICANN, and not by the residency / citizenship of the Registrant.
- editor 7/17/08 10:39 AM

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- editor 7/17/08 10:31 AM

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can conflicts of laws be resolved in a global domain name space?

Out of scope for proposed studies of "key factual issues."

editor 7/17/08 10:39 AM

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