



October 12, 2018

Mr. Cherine Chalaby & Mr. Goran Marby
Internet Corporation for Assigned Names and Numbers
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536, USA
Attn: ICANN Compliance

Dear Mr. Chalaby and Mr. Marby:

This letter is an update to our July 13, 2018 letter¹ to ICANN Compliance regarding notices to registrars requesting access to non-public WHOIS information in accordance with ICANN's Temporary Specification for gTLD Registration Data ("Temp Spec") and GDPR. The results below demonstrate the extreme difficulties faced in obtaining "reasonable access" to redacted WHOIS for legitimate purposes, such as to fight cybersecurity incidents and protect consumers.

On June 2, 2018, AppDetex began the roll out of a systematized process to enable users to obtain, non-public WHOIS data for cybersecurity, consumer protection, and other GDPR-specified uses in compliance with applicable requirements. We have continued to add customers to our requestor system and we continue to see increases in the number of requests being transmitted to registrars in compliance with the Temp Spec and GDPR requirements.

Over the last four months, we have spent considerable resources and taken significant steps to address the communicated concerns of the registrars in an attempt to obtain the redacted information for legitimate purposes allowed under the Temp Spec. Prior to implementation of GDPR, AppDetex developed templates and processes to facilitate access to non-public WHOIS data tied to legitimate purposes for our customers.² Over the course of the last four months, we adapted our system, its requests and the authorizations provided, in an attempt to meet the diverse, individualized demands of each registrar and, in some instances, we included language specifically requested by a registrar. Moreover, in response to individual registrar feedback, we modified our notices to remove requests for associated domains and began requesting non-public data for single domain names only. Finally, we made personal contact, including telephonic contact, directly with all registrars that had not responded in order to ensure that we were abiding by their individualized processes.

¹ <https://www.icann.org/en/system/files/correspondence/milam-to-serad-13jul18-en.pdf>

² Our first notice was sent from the AppDetex requestor system on June 2, 2018. We have continued to add customers to our requestor system and we continue to see increases in the number of requests being transmitted to registrars in compliance with the Temp Spec and GDPR requirements.



The WHOIS requestor system³ has sent in excess of 9000 authorized notices to more than 350 registrars. Notwithstanding ICANN’s directive set forth in Section 4 of Appendix A of the Temp Spec that registrars “must provide reasonable access to Personal Data in Registration Data to

third parties on the basis of a legitimate interests [sic] pursued by the third party,” only 3% of requests have so far yielded full WHOIS records. Though compliance rates have increased (albeit slowly) over the last month as more registrars have begun returning data for our requests the large majority of requests remain unfulfilled.⁴

The responses to our requests fall into the following categories:

Results of Redacted Request Notices sent to Registrars

Category	Tallied Results	Percentage
1. Fully Compliant to Request	224	2.5%
2. Requesting Payment for Data	32	0.4%
3. Requiring Subpoena, UDRP	1027	11.4%
4. Took Irrelevant Action	318	3.5%
5. Asking for Additional Information	1477	16.3%
6. Auto Response Without Follow-up	567	6.3%
7. No Response to Request	5396	59.6%
Grand Total	9041	100%

The average response from first notice to compliance has been 9.13 days. The average time from first notice to response including automated responses with no WHOIS information is 3.38 days.

Our conclusions based on the results of our requests are as follows:

- 1) Redacted WHOIS contact data is largely unavailable for legitimate and legal purposes;
- 2) The majority of registrars do not respond to requests for this data;
- 3) The small percentage of requests that are fulfilled are not completed in a reasonable time period;
- 4) There is no consistency of process for requesting redacted WHOIS data; and
- 5) The public interest is potentially at risk as a result of the unavailability of WHOIS data

³ <https://www.appdetex.com/appdetex-whois-requestor-system-awrs/>

⁴ Our system continues to send WHOIS data reveal requests to ICANN-accredited registrars for GDPR-allowed purposes, including for domains that are infringing upon the legal rights of our customers. We continue to make efforts to have our IP address whitelisted with registrars to the extent that such an option is offered by them.



In order to protect the public interest and to “enable consumers, rights holders, law enforcement and other stakeholders to access the data necessary to address and resolve uses that violate law or rights,” as set forth in Section 4 of the Temp Spec, we believe there are several areas which if properly addressed can significantly improve the notice and reveal process for all stakeholders:⁵

- A) A posted, agreed upon process consistent across all accredited registrars for requesting redacted WHOIS contact data including:
 - a. Format of request;
 - b. Identification of information required to be set forth in the request;
 - c. Email addresses where requests can be sent;
 - d. Specification of documentation required for authenticating request; and
 - e. Time limitation for response to requests;
- B) Guidance on when subpoenas or other legal justification is required;
- C) Guidance on the basis for a legitimate refusal of a request; and,
- D) Guidance on whether charging for access is permitted.

If ICANN’s Board and staff addresses these now, the community will benefit from a clarified data request system under the Temp Spec that enables uniform and efficient requests for redacted WHOIS contact data by stakeholders with legitimate need, or their agents. We believe the above suggested approach “directly involves facilitation of third party processing for legitimate and proportionate purposes related to law enforcement, competition, consumer protection, trust, security, stability, resiliency, malicious abuse, sovereignty, and rights protection” as provided for in Section 4 of the Temp Spec.

To that end, we would be happy to engage in any necessary discussions with ICANN.org personnel and registrar representatives, as deemed appropriate. Further, if you would like to be provided with any additional data with respect to the matters discussed in this letter, we would be happy to address your requirements.

As before, to the extent you would like to discuss anything contained herein, please contact me, Ben Milam, directly at my previously disclosed contact number.

Sincerely,

A handwritten signature in black ink that reads "Ben Milam".

Ben Milam,
General Counsel, AppDetex

⁵ An incidental result of implementation of the requestor system has been discovering inaccuracies in the IANA system, e.g. inaccurate abuse contact emails, etc.