



EUROPEAN COMMISSION

Directorate-General for Communications Networks, Content and Technology

Cooperation
International

Brussels,
CNECT D/1 AG/ka
Ares (2012)

Mr David Cake
Chair
NCUC
Ms Robin Gross
Chair
NCSG

Subject: Online privacy in ICANN

Dear Mr Cake and Ms Gross,

Thank you for your letter of 25 July 2012 to Vice-President Kroes, in which you raised a number of concerns related to the on-going discussions on the contractual arrangements between ICANN and DNS Registrars, as well as more general issues related to data stored in the WHOIS system and the protection of online privacy.

Vice-President Kroes asked me to reply on her behalf.

I appreciate these are important debates in which a delicate balance between different rights and interests – including the right to the protection of privacy and personal data, but also the right of citizens to be duly protected by the relevant law enforcement agencies – has to be found.

The European Commission has been following very closely the on-going discussions within ICANN concerning these topics. Even though the European Commission is not a negotiating party, it is of the utmost importance that any resulting agreement and/or system put in place by ICANN are respectful of applicable law – this is a position we have strongly defended and will continue to do so.

You might be aware that the Governmental Advisory Committee (GAC), which the European Commission is a member of, has clearly expressed its position on several of the topics you mention in your letter.

For example, in its Prague Communiqué (June 2012), the GAC noted that *"several questions relating to privacy and data protection issues and the accountability of resellers remain outstanding [in the new draft Registrar Accreditation Agreement]. As discussed in the public meeting with the Board, the GAC stands ready to assist in these discussions. The GAC encourages the Board to provide written questions on any privacy and data retention matters to the GAC to facilitate an early response"*. Furthermore, in the same Communiqué, the GAC *"endorse[d] the recommendations of the WHOIS Review Team, and will closely monitor the Board's response and subsequent implementation activities"*.

In any case, it is absolutely clear that no matter what the final result of the negotiations between ICANN and the Registrars (or of any other activity undergone by ICANN in the areas you mention in your letter) will be, European Union law as transposed in EU Member States will continue to be enforced fully by the competent authorities.

This means *inter alia* that transfer of personal data from a EU Member State to a third country will have to abide by the specific conditions set forth in applicable EU and national law, including (but not limited to) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data. As you know, the European Commission has also recently adopted a proposal for a comprehensive reform of data protection rules which is currently being discussed by the European Parliament and the Council.

Furthermore, as you might be aware, the issues you refer to in your letter are also under the responsibility of Viviane Reding, Vice-President of the European Commission and Commissioner for Justice, Fundamental Rights and Citizenship, and of Cecilia Malström, Member of the European Commission and Commissioner for Home Affairs. To ensure coordination, I would appreciate if you could inform the representative of the European Commission in the GAC, Mr Andrea Glorioso (Andrea.Glorioso@ec.europa.eu) whether you have already contacted Vice-President Reding, Commissioner Malström or any other member of the European Commission.

I would like to re-assure you that the European Commission will continue to follow these issues as a matter of priority. I would appreciate if you could continue to liaise with us in the coming weeks and months to ensure we are provided with all the relevant information.

Yours sincerely,

Eddy Hartog