



1 November 2017

Jetse Sprey  
Versteeg Wigman Sprey  
De Lairessestraat 158  
1075 HM Amsterdam

via email: sprey@vwsadvocaten.nl

Re: Gemeente Amsterdam FRL Registry B.V.

Dear Mr. Sprey:

Thank you for your letter of 10 October 2017 regarding your clients, the city of Amsterdam and FRL Registry B.V., and ICANN's inquiry regarding your clients' compliance with the provisions of its registry agreement with ICANN (dated 24 July 2014 and 15 May 2014, respectively). ICANN's Contractual Compliance department is conducting this inquiry and will respond separately pursuant to its published procedures. In the meantime, I would like to address some of the issues raised by your clients' introduction of a new registry service without invoking the Registry Service Evaluation Process (RSEP), the 26 October letter from the Dutch Data Protection Authority (DPA), and compliance with existing Dutch Data Protection law and the General Data Protection Regulation (GDPR).

We understand that your clients have implemented a registry level privacy service for registrants who might be "individuals" or "natural persons". This service replaces the registrant's contact information with contact information for a registry-provided privacy service for purposes of complying with existing Dutch data protection law and the upcoming GDPR. ICANN's agreement with FRL Registry requires it to secure approval for new Registry Services (as defined in the Registry Agreement). In addition, the new service introduced inconsistencies into the WHOIS system by masking registrant data into the Registry-provided service only. FRL's sponsoring registrars, on the other hand, continue to provide unrestricted access to full WHOIS data on all registrants.

Registry operators may modify or offer new registry services by complying with the Registry Services Evaluation Policy (RSEP).<sup>1</sup> One of the underlying purposes of this policy is to ensure that a new registry service does not create any security, stability or competition concerns. The policy requires registry operators to submit the proposed registry service for technical evaluation by ICANN org. This obligation exists regardless of whether a new service is being offered to comply with local law. By not submitting an RSEP request prior to implementing the new privacy proxy service, your clients appear to have violated its obligations under the Registry Agreement that implement consensus policy developed by the ICANN community.

Although the compliance review underway does not consider whether your clients' decision to mask personal data for registrants who are natural persons is necessary under Dutch law or the

<sup>1</sup> See Registry Services Evaluation Policy available at <https://www.icann.org/resources/pages/registries/rsep/policy-en>.

GDPR, we appreciate receiving the letter<sup>2</sup> that you obtained from the Dutch DPA regarding conflicts between the Dutch Data Privacy law and the GDPR on the one hand and the obligation in the registry agreement to display WHOIS information for natural persons. This letter enables your clients to invoke the community's WHOIS Conflicts Procedure,<sup>3</sup> which I encourage them to do.

As you may know, ICANN is actively engaged in its own GDPR readiness review, and its community is considering the impact of data protection laws on the domain name system. To that end we would greatly appreciate and formally request any and all information that you submitted that might have led to that determination, and in particular any information that might have indicated that you have a conflict with ICANN that led to your request for the authority to provide a position. Also, please provide any and all information which indicates that you have notified ICANN under the agreement terms of your inability to comply with the law prior to the launch of your service, or any information that might have led to the DPA's suggestion that you and ICANN may be in violation of relevant data protection law.

Finally, the ICANN community, the ICANN Board and the organization are actively discussing the impact that the GDPR will have on WHOIS. Your clients' experience with the Dutch DPA would allow it to make meaningful contributions to these community discussions. I hope they will participate and help the community find the right balance between WHOIS and compliance with local laws. ICANN looks forward to receiving FRL's proposals for solving the tensions noted above.

Sincerely,



John O. Jeffrey  
General Counsel & Secretary

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<sup>2</sup> See Letter to FRL registry about WHOIS data available at <https://autoriteitpersoonsgegevens.nl/nl/nieuws/ap-onafgeschermd-publicatie-van-WHOIS-gegevens-strijd-met-de-wet>

<sup>3</sup> See Revised ICANN Procedure for Handling WHOIS Conflicts with Privacy Law at <https://www.icann.org/resources/pages/WHOIS-privacy-conflicts-procedure-2008-01-17-en>.