

3 December 2018

Ben Milam
General Counsel,
AppDetex

via email: ben.milam@appdetex.com

Dear Mr. Milam:

Thank you for your [letter](#) dated 12 October 2018 regarding AppDetex's "WHOIS requestor system." You indicated that AppDetex sent in excess of 9,000 authorized notices for access to non-public registration data to more than 350 registrars and that, as of the date of your letter, only 3% of the requests had yielded full WHOIS records. To address the low response rate, you asked the ICANN Board and organization (org) to prescribe a process applicable to all registrars for handling these requests, including: specifying the format for requests; identifying information required to be included in the request; providing the email address for requests; identifying any required documentation to authenticate requests; and setting a deadline for responding to the requests. You also ask the Board and org for guidance on when subpoenas or other legal justification is required; the legitimate basis for refusing a request; and whether charging for access is permitted.

In response to your claims regarding the low response rate of registrars who received notices from the AppDetex WHOIS requestor system, two registrars sent letters ([here](#) and [here](#)) to ICANN raising questions about the validity of the notices sent and about AppDetex's responsiveness to registrars' issues with the notices.

As you know, ICANN Contractual Compliance (Compliance) enforces the agreements between ICANN and registries and registrars. As a general matter, Compliance ensures that the contracted parties adhere to their contractual obligations, but it does not prescribe the means by which they must comply. Relevant to your letter, section 4 of the Temporary Specification requires registries and registrars to provide access to non-public registration data "based on legitimate interests not outweighed by the fundamental rights of relevant data subjects, consistent with GDPR." But the Temporary Specification does not authorize ICANN Board or org to prescribe how the registries and registrars must comply with this obligation. ICANN Contractual Compliance can ensure that registries and registrars comply with this obligation but it cannot prescribe the manner in which they comply.

We understand that discussions between you and contracted parties are underway to address all of these concerns. We support these efforts to develop a common approach to the submission and handling of requests for non-public registration data. If ICANN org can help facilitate these discussions, please let us know. We note that these issues will be discussed in the GNSO's EPDP and we encourage you to contribute your views into

that process through their stakeholder group's representatives on that team. Finally, we encourage you to continue working with all stakeholders in developing a Uniform Access Mechanism (UAM) which should address all of the issues raised in your letter.

Thank you for your continued participation in ICANN.

Sincerely,



Göran Marby
President and Chief Executive Officer
Internet Corporation for Assigned Names and Numbers (ICANN)