

Registrar Data Retention Waiver Request (2013 RAA)

Complete this form to request a waiver of one or more of the data retention requirements specified in the 2013 Registrar Accreditation Agreement (RAA). ICANN's consideration of this request is made pursuant to sections 2, 3, and 4 of the Data Retention Specification to the RAA; a waiver is not automatically granted by submitting this form.

Registrar name: OVH SAS
GURID (IANA ID): 433
Legal jurisdiction of registrar: France
Jurisdiction in which legal conflict has arisen: France / European Union
Contact person for this request: Romain BEECKMAN
Email address for contact person: romain.beeckman (at) ovh.net
Telephone number for contact person: +33.320827332

Registrar has determined in good faith that the collection and/or retention of the data element(s) specified in the Data Retention Specification to the 2013 RAA, noted below, violates applicable law based upon (check all that apply):

- a written legal opinion from a nationally recognized law firm in the applicable jurisdiction that states that the collection and/or retention of any data element specified herein by Registrar is reasonably likely to violate applicable law (the "Opinion"); and/or
- a ruling of, or written guidance from, a governmental body of competent jurisdiction providing that compliance with the data collection and/or retention requirements of this Specification violates applicable law; and/or
- a data retention waiver determination previously granted by ICANN.

A copy of the Opinion and governmental ruling or guidance, as applicable, must accompany this waiver request. Please also include any documentation received by your registrar from any governmental authority related to such determination and complete the fields below.

Cite and provide a copy of the relevant applicable law:

Article 6 de la Loi n° 78-17 du 6 janvier 1978 relative à l'informatique, aux fichiers et aux libertés.

« Un traitement ne peut porter que sur des données à caractère personnel qui satisfont aux conditions suivantes :

(....)

5° Elles sont conservées sous une forme permettant l'identification des personnes concernées pendant une durée qui n'excède pas la durée nécessaire aux finalités pour lesquelles elles sont collectées et traitées. »

Article 1 du décret n° 2011-219 du 25 février 2011 :

« Les données mentionnées au II de l'article 6 de la loi du 21 juin 2004 susvisée, que les personnes sont tenues de conserver en vertu de cette disposition, sont les suivantes :

(...)

2° Pour les personnes mentionnées au 2 du I du même article et pour chaque opération de création :

- a) L'identifiant de la connexion à l'origine de la communication ;*
- b) L'identifiant attribué par le système d'information au contenu, objet de l'opération ;*
- c) Les types de protocoles utilisés pour la connexion au service et pour le transfert des contenus ;*
- d) La nature de l'opération ;*
- e) Les date et heure de l'opération ;*
- f) L'identifiant utilisé par l'auteur de l'opération lorsque celui-ci l'a fourni ;*

3° Pour les personnes mentionnées aux 1 et 2 du I du même article, les informations fournies lors de la souscription d'un contrat par un utilisateur ou lors de la création d'un compte :

- a) Au moment de la création du compte, l'identifiant de cette connexion ;*
- b) Les nom et prénom ou la raison sociale ;*
- c) Les adresses postales associées ;*
- d) Les pseudonymes utilisés ;*
- e) Les adresses de courrier électronique ou de compte associées ;*
- f) Les numéros de téléphone ;*
- g) Le mot de passe ainsi que les données permettant de le vérifier ou de le modifier, dans leur dernière version mise à jour ;*

4° Pour les personnes mentionnées aux 1 et 2 du I du même article, lorsque la souscription du contrat ou du compte est payante, les informations suivantes relatives au paiement, pour chaque opération de paiement :

- a) Le type de paiement utilisé ;*

b) *La référence du paiement ;*

c) *Le montant ;*

d) *La date et l'heure de la transaction.*

Les données mentionnées aux 3° et 4° ne doivent être conservées que dans la mesure où les personnes les collectent habituellement. »

Article 3 b) du décret n° 2011-219 du 25 février 2011 :

« La durée de conservation des données mentionnées à l'article 1er est d'un an :

(...)

b) S'agissant des données mentionnées au 3°, à compter du jour de la résiliation du contrat ou de la fermeture du compte ; »

Briefly describe the relevant applicable law in English (if the text of the law is not in English):

article 6 of the relevant applicable French law n° 78-17:

“Processing may be performed only on personal data that meet the following conditions:

(...)

5° they shall be stored in a form that allows the identification of the data subjects for a period no longer than is necessary for the purposes for which they are obtained and processed”.

Decree n°2011-219 du 25 février 2011 :

This decree concerns the data that ISP and webhosting companies have to retain for law enforcements requests and also how long they shall retain these data.

Article 1 2) provides all the information that must be retained for every communication created on a website :

- IP address used for the communication
- User created by the ISMS
- Protocol used for the connection

- the kind of operation made by this communication (for ex : creation, deletion etc..)
- Timestamp
- the User nickname if provided

Article 1 3) ISP and webhosting companies must retain the following data at the creation of a user account or at contract subscription :

- IP Address
- Name, First Name, Organization
- Postal Address
- User nickname
- Email address(es) ou user account
- Phone number(s)
- Password

Article 1 4) ISP and webhosting companies must retain payment data:

- Payment mean
- Payment ID
- Amount
- Date and Timestamp

Specify the allegedly offending data collection and retention elements:

The Data Retention Specification provides that :

« 1.1. Registrar shall collect the following information from registrants at the time of registration of a domain name (a "Registration") and shall maintain that information for the duration of Registrar's sponsorship of the Registration and for a period of two additional years thereafter:

1.1.1. First and last name or full legal name of registrant;

1.1.2. First and last name or, in the event registrant is a legal person, the title of the registrant's administrative contact, technical contact, and billing contact;

1.1.3. Postal address of registrant, administrative contact, technical contact, and billing contact;

1.1.4. Email address of registrant, administrative contact, technical contact, and billing contact;

1.1.5. Telephone contact for registrant, administrative contact, technical contact, and billing contact;

1.1.6. WHOIS information, as set forth in the WHOIS Specification;

1.1.7. Types of domain name services purchased for use in connection with the Registration; and

1.1.8. To the extent collected by Registrar, "card on file," current period third party transaction number, or other recurring payment data.

If this waiver request is based on a data retention waiver determination previously granted by ICANN (i.e., same law, same jurisdiction, same data retention requirement(s)), please provide the date, registrar name, and URL of the previously posted determination and explain why the determination should also be applied to your registrar:

If this waiver request is not substantially based on a data retention waiver determination previously granted by ICANN (i.e., same law, same jurisdiction, same data retention requirement(s)), please explain the manner in which the collection and/or retention of such data is believed to violate applicable law, and provide a description of such determination and any other facts and circumstances related thereto:

One of the objectives of the relevant applicable french law n° 78-17 is to reduce the severity of risks by ensuring that personal data is not retained for longer than necessary.

It requires to define personal data retention periods that are time limited and appropriate to the purpose of the processing.

According to RAA 2013, Registrars are required to keep personal data mentioned in article 1.1.1 to 1.1.8 for a period of two years after the contract for the domain has been ended.

Group article 29, and CNIL both consider that the fact that these personal data may be useful for law enforcement does not legitimise the retention of these personal data after the termination of the contract (position reminded in all official communication of group article 29 and if CNIL position paper).

As explained by the "Article 29 Data Protection Working Party" (letters dated 06 june, 2013 and january 8th, 2014) and confirmed by letters from the french national data protection authority named CNIL, dated octobre 14th, 2013 and decembre 17th, 2013:

"The proposed new data retention requirement does not stem from any legal requirement in Europe.

It entails the extended processing of personal data such as credit card and communication data by a very large number of registrars. The fact that these data may be useful for law enforcement (including copyright enforcement by private parties) does not equal a necessity to retain these data after termination of the contract. Taking into account the diversity of these registrars in terms of size and technical and organisational security measures, and the chance of data breaches causing adverse effects to individuals holding a domain name, the Working Party finds

the benefits of this proposal disproportionate to the risk for individuals and their rights to the protection of their personal data.”

“The 2013 RAA fails to specify a legitimate purpose which is compatible with the purpose for which the data was collected, for the retention of personal data of a period of two years after the life of a domain registration. “

“ La Commission se rallie à la position défendue par le groupe de l'article 29 quant au caractère disproportionné de la durée de conservation des données prévues par le RAA”.

Also, the fact that these personal data can be useful for law enforcement does not legitimise the retention of these personal data after termination of the contract.

Our waiver request concerns articles 1.1.1 to 1.1.8.

According to French legislation, we can consider that data (described in articles 1.1.1 to 1.1.8) should not be kept for more than 12 months after the end of the Registrar's sponsorship.

To justify this 12 months period, we need to refer to the regulation that concerns all French ISP, web hosting companies : Article 3 b) of the Decree n° 2011-219 (<http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000023646013&categorieLien=id>)

Article 3 of this decree provides that customers' data (described in article 1 of the same decree : IP address, name, first name, postal address, nicknames, email addresses, phone numbers, passwords) must not be retained for more than 12 months after the end of contract.

Consequently, we request you to allow us to retain personal data described in articles 1.1.1 to 1.1.8 for 12 months instead of 24 months as defined in the RAA 2013.

Please note that prior to granting any data retention waiver, ICANN will post its preliminary determination on its website for a period of at least 30 calendar days.

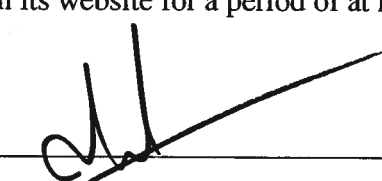
Submitted by:

Signature: _____

Date: _____

Print Name: _____

Title: _____


Date: 24/10/13
Print Name: Romina BEECKMAN Title: CLO

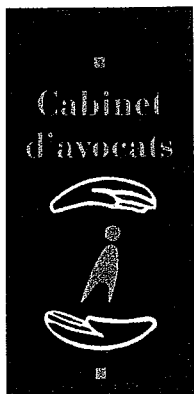
This form and accompanying materials may submitted by courier or fax to:

Attention: Registrar Accreditation Notices

Internet Corporation for Assigned Names and Numbers
12025 Waterfront Drive, Suite 300
Los Angeles, California 90094-2536 USA

Facsimile: + 1 310 823-8649

If you wish to submit an electronic copy, please email attachments as PDF or DOC/x files to RAAquestions@icann.org.



JURISEXPERT

104, rue Esquermoise

59000 LILLE

Tél. +33 (0)3 20 21 97 18

Fax +33 (0)3 20 21 43 58

contact@jurisexpert.net

www.jurisexpert.net

Internet Corporation for Assigned Names and Numbers

12025 Waterfront Drive, Suite 300

Los Angeles, California 90094-2536 USA

LILLE, le 18 décembre 2013

Dear Sir,

I please you to find hereafter my written legal opinion about the collection and retention by Registrar of personal data as specified in 2013 Registrar Accreditation Agreement (RAA).

Blandine Poidevin

Chargée d'Enseignement à l'Université
en Droit du Commerce Electronique
et des Technologies

The Goup 29 Data Protection Working Party has, on 6 June 2013, In a letter dated 6 June 2013, the Article 29 Data Protection Working Party questioned the conformity of the RAA to European law on personal data protection.

Viviane Gelles

CEIPI Marques, Dessins et Modèles

The french independant administrative authority CNIL, which has been entrusted to supervise compliance of data files with the law, also expressed in two letters (14 october 2013 and 17 december 2013) its position on the subject.

Clémence Vancostenoble

Master II Stratégie de l'Innovation
et Droit de la Propriété Industrielle

The Data Retention Specification provides that :

« 1.1. Registrar shall collect the following information from registrants at the time of registration of a domain name (a "Registration") and shall maintain that information for the duration of Registrar's sponsorship of the Registration and for a period of two additional years thereafter:

1.1.1. First and last name or full legal name of registrant;

1.1.2. First and last name or, in the event registrant is a legal person, the title of the registrant's administrative contact, technical contact, and billing contact;

1.1.3. Postal address of registrant, administrative contact, technical contact, and billing contact;

1.1.4. Email address of registrant, administrative contact, technical contact, and billing contact;

■ Cabinet secondaire
6 ter, avenue Mac Mahon
75017 Paris

■ Correspondants à l'étranger
- Hugues Langlais (Canada)
- James E. Arden (USA)

1.1.5. Telephone contact for registrant, administrative contact, technical contact, and billing contact;

1.1.6. WHOIS information, as set forth in the WHOIS Specification;

1.1.7. Types of domain name services purchased for use in connection with the Registration; and

1.1.8. To the extent collected by Registrar, "card on file," current period third party transaction number, or other recurring payment data.

1.2. Registrar shall collect the following information and maintain that information for no less than one hundred **and eighty (180) days following the relevant interaction:**

1.2.1. Information regarding the means and source of payment reasonably necessary for the Registrar to process the Registration transaction, or a transaction number provided by a third party payment processor;

1.2.2. Log files, billing records and, to the extent collection and maintenance of such records is commercially practicable or consistent with industry-wide generally accepted standard practices within the industries in which Registrar operates, other records containing communications source and destination information, including, depending on the method of transmission and without limitation: (1) Source IP address, HTTP headers, (2) the telephone, text, or fax number; and (3) email address, Skype handle, or instant messaging identifier, associated with communications between Registrar and the registrant about the Registration; and

1.2.3. Log files and, to the extent collection and maintenance of such records is commercially practicable or consistent with industry-wide generally accepted standard practices within the industries in which Registrar operates, other records associated with the Registration containing dates, times, and time zones of communications and sessions, including initial registration. »

One of the objectives of the relevant applicable french law n° 78-17 is to reduce the severity of risks by ensuring that personal data is not retained for longer than necessary.

It requires to define personal data retention periods that are time limited and appropriate to the purpose of the processing.

Article 6 of this Act indeed provides that :

"Processing may be performed only on personal data that meet the following conditions:

1° the data shall be obtained and processed fairly and lawfully;

2° the data shall be obtained for specified, explicit and legitimate purposes, and shall not subsequently be processed in a manner that is incompatible with those purposes. However, further data processing for statistical, scientific and historical

purposes shall be considered compatible with the initial purposes of the data collection, if it is carried out in conformity with the principles and procedures provided for in this Chapter, in Chapter IV (formalities prior to commencing data processing) and in Section 1 of Chapter V (obligations incumbent upon the data controllers and the rights of individuals) as well as in Chapters IX (processing of personal data for the purpose of medical research) and X (processing of personal medical data for the purposes of evaluation or analysis of care and prevention practices or activities) and if it is not used to take decisions with respect to the data subjects;

3° they shall be adequate, relevant and not excessive in relation to the purposes for which they are obtained and their further processing;

4° they shall be accurate, complete and, where necessary, kept up-to-date. Appropriate steps shall be taken in order to delete and rectify data that are inaccurate and incomplete with regard to the purposes for which they are obtained and processed;

5° they shall be stored in a form that allows the identification of the data subjects for a period no longer than is necessary for the purposes for which they are obtained and processed”.

The alleged offending data collection concerns name and contact details for the domain name holder and all other types of data a registrar might collect, such as logfiles and billing records containing the 'means and source of payment', logfiles about the communication with the registrar including source IP address, telephone number, e-mail address, Skype handle or instant messaging identifier, as well as the date, time and time zones of communications.

As explained by the "Article 29 Data Protection Working Party" (letter dated 06 June, 2013) and confirmed by letters from the french national data protection authority named CNIL, dated October 14th, 2013 and December 17th, 2013 :

"The proposed new data retention requirement does not stem from any legal requirement in Europe.

It entails the extended processing of personal data such as credit card and communication data by a very large number of registrars. The fact that these data may be useful for law enforcement (including copyright enforcement by private parties) does not equal a necessity to retain these data after termination of the contract. Taking into account the diversity of these registrars in terms of size and technical and organisational security measures, and the chance of data breaches causing adverse effects to individuals holding a domain name, the Working Party finds the benefits of this proposal disproportionate to the risk for individuals and their rights to the protection of their personal data."

Also, the fact that these personal data can be useful for law enforcement does not legitimise the retention of these personal data after termination of the contract.

Therefore, because there is no legal ground for the data processing, I consider that the proposed data retention requirement violates data protection law in France.

Yours faithfully,

A handwritten signature in black ink, consisting of several overlapping loops and a horizontal line at the bottom, positioned above the printed name.

Blandine POIDEVIN



BLANDINE POIDEVIN

16 years of experience

Lawyer (Bar of Lille, France & Paris, France) , Senior Partner and Fonder at JURISEXPERT Company, 104 rue Esquermoise 59800 LILLE, 6 ter, avenue Mac Mahon 75017 Paris.

☎ : 00.333.20.21.97.18 – ☎ : 00.333.20.21.43.58

✉ : bpoidevin@jurisexpert.net

Internet: www.avocats-experts.com, www.jurisexpert.net

Organic correspondance with Hugues Langlais, lawyer at Bar of Montreal (Canada) and James E. Arden, lawyer at Bar of Los Angeles (USA)

Listed on the European Commission list of experts in Media, Internet and Intellectual Property rights areas.

Listed in Chapter 'Law' of the "E-commerce guide : Regional Know-how"

Mediator of Domain Names (.fr, AFNIC)

Areas of expertise

The Jurisexpert cabinet has for dominant the right(law) of the technologies, more specifically the right(law) of the systems of information, Internet, intellectual property and personal data protection.

The Jurisexpert cabinet has a clientele consisted at the same time of computing persons receiving benefits(providers) in information system security, electronic signature, persons receiving benefits(providers) of telecommunication, dated centers, software publishers and also of announcers, sellers of e-commerce, operators of games(sets) and regions with a measure of autonomy.

The Jurisexpert cabinet developed a particular skill(competence) regarding apprehension of the Internet tool.

Indeed, Master(Teacher) Blandine POIDEVIN worked in this domain from 1996 in France and in the United States.

She(It) is also teaching in right(law) of the e-commerce within the University of Lille and various engineering schools and business(trade).

Besides, she(it) leads speaker's activity to the national and international level.

So, the Jurisexpert cabinet is partner of various associations as Clusif (French Club of the Information security).

The Jurisexpert cabinet is also partner, since its creation, of the International Forum of the Cybercrime.

These activities bring the Jurisexpert cabinet to be particularly present in the phases of advice(councils) with his(her) customers in particular on the occasion of legal audits, of writing(editorial staff) of documents and negotiations.

A quarter of the activity of the Cabinet(Office), approximately, is dedicated to the contentious activity, the dispute taking place on the whole French territory, the Jurisexpert cabinet were eager to follow his(her) customers on the whole territory and abroad, by means of a network of toilets(offices) occurring(speaking) in the same domains.

The Jurisexpert cabinet is also appointed as “Correspondant Informatique et Libertés” by several french companies. As such, it enjoys a privileged contact with a CNIL dedicated service.

The Jurisexpert cabinet maintains, besides, narrow links with correspondents' network in France and abroad, allowing him(her) to complete its range of services by complementary(additional) skills in its main fields of activity, or appropriate(peculiar) to the right(law) of the various states of the European Union, the United States and, more generally, any country susceptible to present an interest within the framework of the economic development of his(her) customers.

Specific experience relevant for this mission

Advisor for mail-order companies : contracts, analysis of EU directives applications, work sessions on transpositions of UE directives into French law

Arbiter in charge of resolution of conflicts about domain names

Worked for private & public companies in the application process and in various procedures before the CNIL

Extensive experienced in IP issues (negotiation & litigation)

Worked and consulted for leading ISP in France since 1999 (3 different legal regulations).

Elaborated numerous online business contracts and online licences for various private actors on the Web.

Data protection audit.

Education

- Lawyer Diploma (1996, Lille)
- Masters Diploma in Business Law (1995, University of Lille II)
- Diploma of DU Intellectual Property and New Technologies (1996, University of Lille II)
- Training periods at Lyon & Lyon Lawyer Company (LOS ANGELES, 1997) and Craig Zolan Lawyer Company (NEW YORK, 1997)
- Certificate of training, WIPO workshop for Mediators in Intellectual Property Disputes (LONDON, 2001)

References

- Author for the ‘Éditions Législatives’ (“Business Law” Guide: chapter “Billing and E-billing” - ‘Internet Law’ Guide: chapters ‘Internet and Sport’ – ‘Distribution and Internet’ – ‘Internet Advertising– ‘Databases’ – ‘Spamming’ – ‘Electronic Billing’ – ‘Promotional sales’ – ‘Buying and selling space for advertising purpose on the Web’),
- Author for ‘Internet et Entreprise’ magazine
- Permanent Editor and Author for the ‘Information Society Letter, the ‘Gazette of Nord- Pas de Calais’ (‘New Technology’ Section), ‘ AIDLE Bulletin’
- “Strategic Partnership for Innovative Products and New technologies”, AIJA
- “The Electronic Commerce framework after the project of law ‘Confiance dans l’économie numérique’ (Trust the Digital Economy)”, Expertises,
- “Domain Name and Right to Name of Athletes », Informations et dossiers d'IP Twins,

- "Electronic Archiving", Usine Nouvelle,
- "Private data and Electronic Administration », Expertises # 266
- "The principle of connexion data erasing and its exceptions" Legalis.net,
- "Biotechnologies : the Patent domain" AIJA n° 72,
- 'Computer Security', L'Entreprise,
- 'Human Body for Sale ?', The Numeric Region n° 89,
- 'Online Publicity and Communication of Legal decisions', Expertises,
- 'The UMTS commission tackles TV on Soccer diffusion', La Région Numérique n° 87,
- 'Télévision, Internet and Soccer, AIJA n° 70,
- International A for France : 'A report on Global Jurisdiction Issues created by the Internet', édité by ABA (American Bar Association),
- 'Email content does commit you', 'L'Essentiel du Management',
- 'B2C Internet sales regulations ', 'L'Entreprise en solo',

Online Articles (extract)

- "Creation of employees : How to share the Rights ?", www.legalbiznet.com,
- "Electronic Signature Manual ", www.lentreprise.com,
- "Company Electronic chart : the manual", www.legalbiznet.com,
- "New rules to recruit soccer players ", www.infosport.org,
- 'An ASP contract template and 'an Electronic Chart template' , www.legalis.net,
- "The legal framework for certification ", www.juriscom.net,
- 'The commerce of media Right by the UEFA', www.infosport.org,
- 'Intrusive Advertising' : www.planete-commerce.com
- Law section of ABC-Netmarketing website and diffusion list, (abc-netmarketing.com)
- 'La Porte du Droit.com', 'Electronic Commerce' and 'Intellectual Property' sections
- 'Le Journal du Net', Special Thematic Editions on Online Gaming and on Internet and Soccer.

Research

- Responsible for Third degree / PhD theses, University of Lille II, France (2 to 3 theses yearly on electronic commerce)
- Online Gaming market legal framework in Europe (for FEDEL : Online Game Editors Federation)

- Responsible for Third degree / PhD thesis on Open Source Software at ESIEA (Ecole Supérieure en Informatique, Automatique, Electronique).

- **Conferences and Seminars**

WHAT	WHERE
« Les contrats de la propriété industrielle »	Club des inventeurs Lille
« Quels changements avec la loi de confiance pour l'Economie Numérique ? »	Digiport Lille
« Le nouveau régime des droits d'auteurs »	EFE Paris
« Droits et devoirs de l'employeur et du salarié face à internet »	Entreprises et Cités
« L'intérêt de la charte informatique »	Chambre de Commerce Calais
« Le nouveau régime du commerce électronique et de la publicité sur internet »	Groupe Trois Suisses
"Maîtriser les risques juridiques d'Internet"	Les rencontres d'Affaires, Paris
"Droits et devoirs des salariés dans l'usage des TIC"	Tour de France des Territoires TOURCOING
"Le cadre juridique de l'Open Source"	Conférence DECLIC - LILLE
"Aspects juridiques de la FOAD"	Conseil Régional de Basse-Normandie - CAEN
"Sécurité des systèmes d'information"	Chambre de Commerce et d'Industrie de LENS
"Strategic Partnerships for product innovation and new technologies"	AIJA Val d'Isère
"Evolution et mise en perspective des créations artistiques et programmes mis en libre accès"	3èmes Rencontres Audiovisuelles Communauté Urbaine de LILLE
"Les contrats essentiels en matière de site Internet"	Conférence "DECLIC" LILLE
"A qui appartient l'image sur Internet ?"	Web and Film Festival, LE TOUQUET
"Administration électronique et protection des données personnelles"	Forum des droits sur l'Internet LILLE
"Sport et TV interactive : marché sportif en mutation ?"	NTIC Pays Basque
'Databases - Regulation of the new Capital in the Information Society'	Lisbonne, Portugal
'Formation of online contracts & Digital Signatures'	AIJA, OSLO
'Aspects juridiques de la création d'une entreprise innovante'	Printemps de la Jeune Entreprise, ROUBAIX
'Maîtriser les règles du commerce électronique'	Les Rencontres d'Affaires PARIS
'Internet, quelles nouvelles ?'	Barreau de Lille
'Sciences et Citoyens'	CNRS
'Aspects juridiques de l'animation d'un site Internet'	Club des Webmasters
'Droit d'auteur et droit à l'image sur Internet'	AREPP
'Droits du Sport : comment prendre le virage Internet ?'	Benchmark Group PARIS
'Sécurité Informatique : aspects juridiques'	Chambre de Commerce et d'Industrie de DUNKERQUE

	Fête de l'Internet
'La valorisation des apports dans la création d'entreprise'	MITI
'Droit des contrats internationaux et la propriété intellectuelle'	Norcomex
'La signature électronique'	Club des Juristes Cité des Entreprises
'Les places de marchés BtoB et les problèmes de concurrence nationaux et européens'	EFE PARIS
'Le droit européen du commerce électronique'	Enovationmeeting
'Internet et le Droit'	Ruche d'Entreprise de ROUBAIX Atelier Numérique
'La signature Electronique au regard du droit Français et Européen'	Salon LEXPOSIA PARIS Union des Avocats Européens
'Le droit de l'auteur et Internet'	AG de l'ADBS (Association des professionnels de l'information et de la documentation)
'Les certificats électroniques'	Chambre de Commerce et d'Industrie de LILLE
Animation de l'Atelier Juridique sur le thème 'Droit d'Auteur sur Internet'	FIFI (Festival International du Film de l'Internet)
'Le droit du commerce électronique'	World Trade Center de Lille
'Création Multimédia : auteurs, éditeurs, distributeurs, quelles relations ?'	Centre Régional de Ressources Pédagogiques – MULTICLICS
'La protection de l'innovation'	Interventions en partenariat avec l'INPI et l'ARIST
'Internet et les droits d'auteur'	FNAC de Lille
'Linux et les logiciels libres'	CCI de Lille
'Cadre Juridique du commerce électronique'	2 ^{ème} , 3 ^{ème} et 4 ^{ème} Forum des NTIC – CCI de Béthune –
'Le statut juridique de l'affilié',	Salon Webcommerce - CNIT
'Advertising & Marketing Practices in the web – legal consequences in view of unfair competition trademarks and other Intellectual Property rights'	AIJA, Helsinki, Norway
'Aspects juridiques et fiscaux du commerce électronique'	CCI de Martinique
'Le droit et le Multimédia'	ENIC
' Et si Internet devenait un outil de travail'	EUROFORUM PARIS
Participation aux 'Mardis de l'Internet'	Forum des sciences de Villeneuve d'Ascq

'Quelle liberté pour le numérique ?'	SENAT
'Innovation Industrielle : les étapes-clé'	Maison du Commerce, Club d'Avocats et Entreprise
'Initier et conduire un projet multimédia' – aspects juridiques	CCRAV (Centre Régional de Ressources Audiovisuelles)

Professional Associations

- Member of CYBERLEX
- Member of AFDIT (Association Française du Droit de l'Informatique et des Telecoms), Commerce Électronique Commission
- Member of FEDEL (Fédération des Éditeurs de Jeux en Ligne), Manager of Legal Commission
- Membre of ACSEL, Legal Commission

Professional Networks

- Member of AIJA (Association Internationale des Jeunes Avocats – International Young Lawyer Association), New Technologies and Intellectual Property Commission
- Member of World Trade Center Network

Teaching and University positions

- Teaching at 'DESS Droit de la Distribution et Droit du Cyberspace' (Masters / PhD Level in Distribution Law and Cyberspace Law), Université de Lille II – Legal Aspects of Electronic Commerce
- Teaching at 'Magistère Spécialisé de Marketing Direct et Commerce Électronique' (Master Level Specialized in Direct Marketing and Electronic Commerce', ESC LILLE.
- Teaching at EDHEC Business School, 3rd Year, (Intellectual Property and New Technologies)
- Teaching at Catholic University of Lille, Master of Business Law (Right of New Technologies)
- Teaching at AUDENCIA Business School, Nantes, 3rd Year, Internet Law.
- Teaching at 'Master of Business Law (IAE), University of Valenciennes, Intellectual Property Unit and New Technologies Unit.
- Teaching at 'Master of Business Law (IAE), University of Lille, Internet Law.
- Teaching at 'Ecole des Mines de Douai Engineering School', Computer Law.
- Teaching at ESJ (Ecole Supérieure of Journalism) : legal aspects of Internet Communication.
- Teaching for 'Agrégation en Economie » Program (Internet Law)
- E-business Seminar (Comex PhD)

- Multimedia and Intellectual Property class, Artois University

Consultations

Consultation for Professor Philippe Gaudrat and G. Massé reports on 'la titularité des droits sur les œuvres réalisées dans des liens d'un engagement de création' (ASCEL)

Consultation for the project of french law on Information Society for the ACSEL.

Web Site

Chief editor and moderator of www.jurisexpert.net

Languages

French & English

Specific experience relevant for this mission

Advisor for mail-order companies : contracts, analysis of EU directives applications, work sessions on transpositions of UE directives into French law

Arbiter in charge of resolution of conflicts about domain names

Worked for private & public companies in the application process and in various procedures before the CNIL

Extensive experienced in IP issues (negotiation & litigation)

Worked and consulted for leading ISP in France since 1999 (3 different legal regulations).

Elaborated numerous online business contracts and online licences for various private actors on the Web.

Madame Blandine POIDEVIN
JURISEPERT
3 RUE BAYARD
59000 - LILLE

Instruction du dossier :
Tiphaine Bessière

Paris, le **17 DEC. 2013**

N/Réf. : IFP/TBE/CR132700

Saisine n° 13029243

(à rappeler dans toute correspondance)

Madame,

Je fais suite aux échanges que vous avez eu avec mes services quant à la position de la Commission Nationale de l'Informatique et des Libertés concernant le contrat type signé entre l'ICANN et les bureaux d'enregistrement de noms de domaine (« *Registrar Accreditation Agreement* »).

Comme vous le savez, le groupe de l'Article 29 a adressé un courrier à l'ICANN en juin 2013, insistant sur le caractère disproportionné de la durée de conservation des données prévue par ce contrat. Dans mon courrier du 14 octobre 2013, je vous confirmais que la Commission, en tant que membre actif du groupe de l'Article 29, est en accord avec la position de ce dernier.

Vous sollicitez une nouvelle fois l'avis de la Commission sur ce sujet.

Dans ce contexte, je ne peux que vous indiquer à nouveau que la Commission se rallie à la position défendue par le groupe de l'Article 29 quant au caractère disproportionné de la durée de conservation des données prévues par le *Registrar Accreditation Agreement*.

A cet égard, je vous rappelle que l'article 6-5° de la loi du 6 janvier 1978 modifiée prévoit, au même titre que la Directive 95/46/CE, que des données personnelles ne peuvent être conservées que « *pendant une durée qui n'excède pas la durée nécessaire aux finalités pour lesquelles elles sont collectées et traitées* », ce qui ne semble pas être le cas en l'espèce.

Je vous prie d'agréer, Madame, l'expression de mes salutations distinguées.



Hervé MACHI

Directeur des affaires juridiques,
internationales et de l'expertise

Commission Nationale de l'Informatique et des Libertés

8 rue Vivienne CS 30223 75083 PARIS Cedex 02 - Tél: 01 53 73 22 22 - Fax: 01 53 73 22 00 - www.cnil.fr

RÉPUBLIQUE FRANÇAISE

ARTICLE 29 Data Protection Working Party



Brussels, 06 June 2013

Dr. Steve Crocker and Mr. Fadi Chehadé
Chairman and CEO of the Board of Directors
Internet Corporation for Assigned
Names and Numbers (ICANN)
4676 Admiralty Way, Suite 330
Marina del Rey, CA 90292-6601

By email to the Director of Board Support:
diane.schroeder@icann.org

Subject: Statement on the data protection impact of the revision of the ICANN RAA

Dear Mr Crocker and Mr Chehadé,

In the context of ICANN's revision of the Registrar Accreditation Agreement (RAA) and the final **RAA Proposal**¹, the Working Party on the Protection of Individuals with regard to the Processing of Personal Data (Article 29 WP)² wishes to provide a harmonised statement concerning compliance with European data protection law.

Following up on our letter of 27 September 2012³ and previous contributions to the process of collecting and disclosing WHOIS data⁴, this statement specifically addresses the legitimacy of the data retention obligation for registrars, contained in the new RAA.

The Working Party notes that ICANN has included a procedure for registrars to request a waiver from these requirements if necessary to avoid a violation of applicable data protection law. Such a waiver request can be based on written guidance from a governmental body of

¹ ICANN Proposed Final 2013 RAA of 22 April 2013, URL: <http://www.icann.org/en/news/public-comment/proposed-raa-22apr13-en.htm>

² The Article 29 Working Party on the Protection of Individuals with regard to the Processing of Personal Data is an independent advisory body on data protection and privacy, set up under Article 29 of the Data Protection Directive 95/46/EC. It is composed of representatives from the national data protection authorities of the EU Member States, the European Data Protection Supervisor and the European Commission. Its tasks are described in Article 30 of Directive 95/46/EC and Article 15 of Directive 2002/58/EC. The Article 29 Working Party is competent to examine any question covering the application of the data protection directives in order to contribute to the uniform application of the directives. It carries out this task by issuing recommendations, opinions and working documents.

³ Article 29 Working Party letter to ICANN, 26 September 2012, URL: http://ec.europa.eu/justice/data-protection/article-29/documentation/other-document/files/2012/20120926_letter_to_icann_en.pdf

⁴ URLs: http://ec.europa.eu/justice_home/fsj/privacy/docs/wpdocs/2003/wp76_en.pdf, <http://www.icann.org/correspondence/schaar-to-cerf-22jun06.pdf> and <http://gns0.icann.org/correspondence/schaar-to-cerf-12mar07.pdf>

This Working Party was set up under Article 29 of Directive 95/46/EC. It is an independent European advisory body on data protection and privacy. Its tasks are described in Article 30 of Directive 95/46/EC and Article 15 of Directive 2002/58/EC.

The secretariat is provided by Directorate C (Fundamental Rights and Union Citizenship) of the European Commission, Directorate General Justice, B-1049 Brussels, Belgium, Office No LX-46 01/190.

competent jurisdiction providing that compliance with the data retention requirements violates applicable law.

In order to avoid unnecessary duplication of work by 27 national data protection authorities in Europe, with this letter, the Working Party wishes to provide a single statement for all relevant registrars targeting individual domain name holders in Europe.

The final proposed Data Retention specification roughly distinguishes between name and contact details for the domain name holder (specified in 1.1.1 to 1.1.7) and all other types of data a registrar might collect (specified in 1.2.1 to 1.2.3), such as logfiles and billing records containing the 'means and source of payment', logfiles about the communication with the registrar including source IP address, telephone number, e-mail address, Skype handle or instant messaging identifier, as well as the date, time and time zones of communications.

Registrars are required to keep the first category of personal data for a period of two years after the contract for the domain has been ended. The second category of personal data must be retained for six months after the contract has ended.

The first category of data includes payment data, defined as: *'card on file', current period third party transaction number, or other recurring payment data.*

The proposed new data retention requirement does not stem from any legal requirement in Europe.⁵ It entails the extended processing of personal data such as credit card and communication data by a very large number of registrars. The fact that these data may be useful for law enforcement (including copyright enforcement by private parties) does not equal a necessity to retain these data after termination of the contract. Taking into account the diversity of these registrars in terms of size and technical and organisational security measures, and the chance of data breaches causing adverse effects to individuals holding a domain name, the Working Party finds the benefits of this proposal disproportionate to the risk for individuals and their rights to the protection of their personal data.

Secondly, the Working Party reiterates its strong objection to the introduction of data retention by means of a contract issued by a private corporation in order to facilitate (public) law enforcement. If there is a pressing social need for specific collections of personal data to be available for law enforcement, and the proposed data retention is proportionate to the legitimate aim pursued, it is up to national governments to introduce legislation that meets the demands of article 8 of the European Convention on Human Rights and article 17 of the International Covenant on Civil and Political rights.⁶

The fact that these personal data can be useful for law enforcement does not legitimise the retention of these personal data after termination of the contract. Because there is no legal ground for the data processing, the proposed data retention requirement violates data protection law in Europe.

⁵ The European data retention directive 2006/24/EC imposes data retention obligations on providers of public electronic communication networks and services. Registrars are not such providers and are therefore not subjected to this European data retention obligation.

⁶ Obligations with regard to the protection of personal data also follow from the OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data (1980) and the UN Guidelines concerning computerized personal data files (1990).

In general, we repeat that the problem of inaccurate contact details in the WHOIS database cannot be solved without addressing the root of the problem: the unlimited public accessibility of private contact details in the WHOIS database. In that light, the Working Party welcomes the growing number of registries in Europe that are offering layered access to the WHOIS data.

Yours sincerely,

On behalf of the Article 29 Working Party,

Jacob Kohnstamm
Chairman