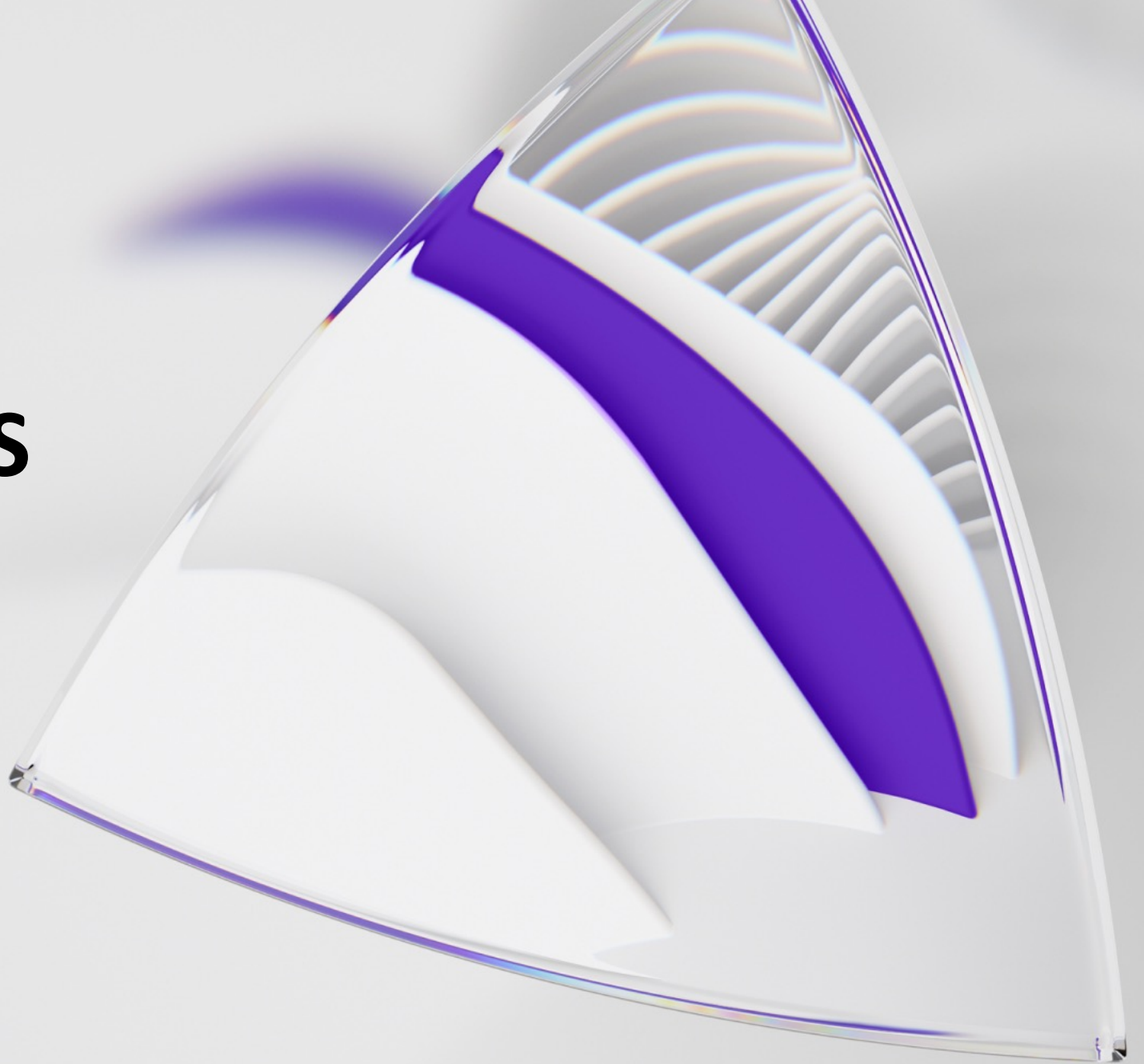




GDPR and WHOIS

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Agenda

**Pre-General Data Protection Regulation
(GDPR)**

GDPR and the Temporary Specification

**Attempt to fix the problem: Expedited
Policy Development Process (EPDP)**

Current status and likely outcomes

Background: who “runs” the internet?

Content regulation

- Regulation up to each jurisdiction, varies by subject matter; US:
 - Copyright: DMCA
 - Speech: CDA Section 230
 - Children: COPPA

Unique identifiers

- Domain names and IP addresses
- Pre-1999: US Dept of Commerce contracted out “IANA Functions”
- NTIA (under Dept of Commerce) transitioned IANA Functions to ICANN to run independently
- Post-transition: **ICANN**, a California nonprofit public benefit corporation

ICANN

- Coordinates domain name registration data (WHOIS) policies
- WHOIS policy status pre-GDPR

Uniform policy for gTLDs, e.g. .com, .microsoft, .ninja

Jurisdictional variations for ccTLDs e.g. .us, .uk, .cn

Syntactical “accuracy” required; functionality required for email or phone

Privacy/proxy data permitted; policy implementation paused

ICANN rejected most ‘WHOIS conflicts with local laws’ requests

“Thick WHOIS” transition for .com delayed repeatedly

GDPR and Temporary Specification – 2018

- ICANN unilaterally amends contracts with its contracted parties (registries and registrars, together “C.P.s”), causing WHOIS blackout
- C.P.s may provide data on request; most do not;
 - ICANN declines to enforce
 - No centralized place to submit requests
 - No uniform criteria for processing
- ICANN states intention to restore as much access as legally possible; begins EPDP

Domain Registration Data (WHOIS) pre- vs. post-GDPR

Pre-GDPR

- C.P.s must **collect and publish**: name (org optional), postal address, phone number, email address
 - Registrant, Administrative, Technical contacts
- ICANN Accuracy Reporting System (ARS) ensuring accuracy
- ICANN investigates and enforces accuracy requirements

Post-GDPR (Temp Spec, EPDP 1)

- C.P.s must **collect and redact**: name (org optional), postal address, phone number, email address; only Registrant required
- C.P.s **may** disclose data on request
- ICANN halts ARS
- ICANN halts accuracy enforcement

EPDP Outcomes

- ✓ Centralized/uniform WHOIS request submission
 - ✓ Requestor accreditation could improve outcomes
 - ✓ Response SLAs
 - ✓ ICANN visibility into request outcomes
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- ↓ C.P. sole discretion to disclose/deny requests
 - ↓ Legal person data may still be redacted
 - ↓ No uniform registrant contact method
 - ↓ No evolution with increased legal clarity

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- ICANN board adoption uncertain
 - “Expensive ticketing system”
 - Lack of agreement and clarity around ICANN’s ‘controllership’