

25th February, 2020

To The Honourable Members  
Joint Parliamentary Committee on the Personal Data Protection Bill, 2019  
India

Dear Honourable Members,

We, the Internet Corporation for Assigned Names and Numbers (ICANN), would like to take the opportunity to address you with respect to a specific issue under the Personal Data Protection Bill (PDP Bill).

ICANN is a global multistakeholder organisation that manages Internet resources for the public benefit. ICANN is best known for performing the role of technical coordinator of the Internet's Domain Name System. ICANN ensures, through its coordination of the unique identifiers, that there is one, global Internet.

ICANN has watched, with interest, India's development as a digital nation and appreciates the steps being taken by the Government of India to protect the privacy of its citizens. We have reviewed the draft PDP Bill from a purely technical perspective and would like to provide information about how the PDP Bill, as currently drafted, might impact the policies and contracts that are used to facilitate the universal coordination of the Internet's unique identifiers.

Chapter 2, Section 11 suggests that if a "data principal" (such as the registrant of a domain) does not consent to the processing of personal data, domain name registries and registrars would be unable to provide domain name registration services. This is because domain name registries and registrars must process certain personal data in order to effect a domain name registration, but do not appear to be permitted to do so under the PDP Bill without consent from the "data principals" concerned.

To explain further, each registry operator and registrar under contract with ICANN is required to maintain its own database of registration data and operate its own registration data directory service that provides access to registration data, which may include personal data. Registry operators and registrars are required to take the following steps (among others) related to registration data:

1. Registrar collects registration data from registrant ("data principal").
2. Registrar transfers registration data to registry operator or its service provider.
3. Registrar transfers registration data to a registrar data escrow agent.
4. Registry operator transfers registration data to a registry data escrow agent.

Registration data must also be transferred by registry operators and registrars in the following ways:

1. Registry operators or registrars transfer limited registration data for particular domain names to ICANN org for the purpose of investigating compliance-related inquiries and enforcing ICANN agreements and policies.
2. Registry operators transfer registration data to an Emergency Back-End Registry Operator if it is at risk of failing to sustain any of the critical registry functions.
3. Registry operators and registrars transfer certain registration data (such as a registrant's name, e-mail address, and/or postal address), upon request, to third parties, such as law enforcement authorities and intellectual property holders, who have demonstrated that they have a legitimate interest in accessing this data.

From our reading of the PDP Bill, it is our understanding that each of the above instances would require the “data principal” to consent to this processing. Obtaining consent from the “data principal” in these instances, however, could be very challenging as they can be time sensitive. For example, in instance (2) above, a registry operator at risk of failing is unable to transfer registration data to an Emergency Back-End Registry Operator without consent, and this could result in a disruption of Internet services to users in India.

There are ways to avoid these consequences. For example, a regulation either expanding the exceptions in Chapter III, Section 13, to the consent requirement, or at a minimum, expanding the list of “reasonable purposes” in Chapter III, Section 14, to include these and similar functions specifying that the above described activities are carried out for reasonable purposes and therefore do not require consent from “data principals” could mitigate the issue raised. Such “reasonable purposes” could, among other things, include all activities necessary to effect the registration of a domain name as “performance of a contract” between a registrant and a registrar, ICANN’s coordination of the unique identifiers of a domain name with an Internet Protocol address, or the transfer of registration data to a third party with a legitimate interest for accessing such data.

We thank you for the opportunity to raise this issue and would be very grateful if the Joint Parliamentary Committee would consider the above. We remain available to answer any questions or provide clarifications. My colleague Samiran Gupta ([samiran.gupta@icann.org](mailto:samiran.gupta@icann.org)) based in New Delhi, India is authorized to make a representation on behalf of ICANN.

Sincerely,



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