

# Internet Committee Report

## Survey on the Disclosure of WHOIS Data in ccTLDs in Asia-Pacific Regions After GDPR

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## Disclosure of WHOIS data in ccTLDs in Asia Pacific regions in the background of GDPR

During 2020-2021 term, the Digital Asia Subcommittee of INTA's Internet Committee conducted a survey on the subject of WHOIS data disclosure in Asia-Pacific ccTLDs. The purpose of this survey was to learn whether the disclosure of domain name registration data known as "WHOIS data" for country code top level domains (ccTLDs) in Asia Pacific jurisdictions were affected by the enforcement of the European Union's General Data Protection Regulation (GDPR). This is because the enforcement of GDPR in Europe led the Internet Corporation for Assigned Names and Numbers (ICANN) to restrict access to WHOIS data in generic top level domains (gTLDs) worldwide. Brand owners are therefore interested to know whether the same policies have effected ccTLDs worldwide, as some jurisdictions have decided not to apply similar policies due to law enforcement, cybersecurity and public interest concerns. It is important to note that ccTLDs are not subject to ICANN policies regarding domain names. They are regulated by the jurisdictions in which they originate.

This survey included 20 questions and covered 10 countries or regions in Asia Pacific area, including Australia (.au), New Zealand (.nz), Papua New Guinea (.pg), India (.in), Mainland China (.cn), Taiwan (.tw), Hong Kong (.hk), Malaysia (.my), Kazakhstan (.kz), Uzbekistan (.uz).

The survey result revealed that, among the 10 surveyed ccTLDs, GDPR only affected the disclosure of WHOIS data for .tw domains. The .tw domain is administered under the laws of Taiwan. There is also restriction for the disclosure of WHOIS data in other surveyed ccTLDs, but such restriction is mainly due to local privacy protection law (see question 2 below). Therefore, we can conclude that the disclosure of WHOIS data for ccTLDs in the Asia Pacific region were affected by the enforcement of GDPR in very limited scope.

As the disclosure of the personal information in the WHOIS data is likely subject to privacy and data protection laws in many countries, our survey updated the current legislation status in privacy and data protection field (see question 3 and attachment 1 below). Moreover, this survey also extracted a few good practices adopted by some ccTLDs authorities in their domain name dispute resolution procedures (see question 5 below). The following is a summary of the survey result. Questions covered are discussed below.

1. Whether it is possible for EU registrants to register the ccTLDs in the surveyed countries or regions?

Among the 10 surveyed countries or regions, there are some restrictions for EU registrants to register their ccTLDs in Australia, Malaysia, and Papua New Guinea, details of which are listed below, whereas there is no restriction for the other 7 countries or regions.

- 1) In Australia: The EU registrant that meets the eligibility criteria (<https://www.auda.org.au/policy/au-domain-administration-rules-licensing>) can register .au domain names. Registrants of .au domain names must demonstrate an Australian Presence by virtue of a pending or registered Australian trade mark or being a foreign company licensed to trade in Australia and possessing an Australian Registered Body Number.
  - 2) In Malaysia: Generally, the .my domain name is reserved to Malaysian citizens or other entities such as the government of Malaysia or organizations established in Malaysia, and EU citizens are restricted from registering or obtaining the country code domain name. However, a foreign company that is registered under the Malaysian Companies Act 2016 (“**CA 2016**”) and non-Malaysians residing in Malaysia may nonetheless apply for a .my domain name if they are able to produce the relevant supporting documents prescribed by MYNIC Berhad, the official .my domain registry. The full list of supporting documents may be found at <https://mynic.my/resources/domains/fag/#Supporting-documents>. It may also be possible for an EU citizen to obtain a .my domain through winning of a domain name dispute.
  - 3) In Papua New Guinea: All applicants must demonstrate a local presence or interests in Papua New Guinea to register .pg domain. Registration will not be granted if the operation is solely conducted from overseas without any local interests.
2. Is there restriction for the disclosure of WHOIS data for the ccTLDs of the surveyed countries or regions? Is it due to the enforcement of GDPR?

Based on the survey, among the 10 surveyed ccTLDs, 1) GDPR has clearly affected the disclosure of WHOIS data for **.tw** domains when the registrant is from EU, as there is clear indication of “not displayed due to GDPR” for some undisclosed information such as the registrant’s contact, technical contact, etc. when we checked some domains like hugoboss.tw, puma.tw, ferrari.tw. 2) there is some restriction for the disclosure of WHOIS data in Uzbekistan for .uz domains if the domain name owner is a natural person, but such

restriction is not due to GDPR, but due to local privacy protection law. 3) there is no mandatory restriction for the disclosure of WHOIS data in the rest eight countries or regions for their ccTLDs, but in practices some registrars voluntarily make some redaction for privacy protection reason, especially for personal data, like in India and Mainland China. Some details are listed below.

- 1) In Uzbekistan, if the domain name owner is a natural person, information about the domain name owner's name and contacts are hidden and are not provided by the Registrar even if requested by an attorney. Only courts and law enforcement bodies can obtain such information as it falls under the privacy (personal data) protection legislation. Such restriction is not due to the enforcement of GDPR, but due to the enforcement of domestic legislation related to privacy protection.
- 2) In Malaysia, there is currently no redacted information for WHOIS data for its .my domains because MYNIC's WHOIS Policy dictates that all information should be made available in the public domain. MYNIC's privacy policy would still be subject to the Malaysian Personal Data Protection Act 2010, however by reference to their FAQ available here <https://mynic.my/resources/domains/faq/#MYNIC-WHOIS-Service>, they are of the view that its public registry should be made available for all Internet Users, as this makes it easier to identify the legal registrant of a domain name and should therefore help build more confidence in the use of the Internet.
- 3) In Kazakhstan, in accordance with the Kazakhstan legislation, the registry provides all current information about registered domain names through the WHOIS system. During the registration of the domain name, the registrant gives its consent to the collection, storage and processing of its personal data.
- 4) In India, no explicit rule in the current policies for mandatory redaction of owner information is found. For instance, the registry website itself has a link to view owner information - <https://www.registry.in/domain-search> . However, on testing a few domains, it was noted that the registrant organization name shown but other data redacted. It was also noted that some registrars voluntarily redact WHOIS data for domains registered through them.

3. Does restriction for the disclosure of WHOIS data for some ccTLDs cause difficulty for right holder to enforce their right against infringing domains? How does the right holder overcome such difficulty?

Our survey revealed that the restriction for the disclosure of some WHOIS data for some ccTLDs does cause difficulty for right holder to enforce their right against the ccTLDs. It may take additional time and effort to get the information required for issuing a warning letter to the ccTLD registrant or file a suit against the same.

Sometimes, the non-disclosed information such as the contact for the registrant can be obtained without much difficulty from the registrar or the registry. Like in New Zealand, parties can request registrant details from the registry InternetNZ where the registrant details have been withheld from the WHOIS register.

Sometimes, it is difficult to get such non-disclosed information from the registrar. Like in Uzbekistan, as mentioned in the above part, if the .uz domain name owner is a natural person, information about the domain name owner's name and contacts are hidden and are not provided by the registrar even if requested by an attorney. Only courts and law enforcement bodies can obtain such information as it falls under the privacy (personal data) protection legislation. In such case, to obtain the registrant's name and contacts, lawsuit has to be firstly initiated against the registrar, in order to oblige the latter to disclose respective information about the owner before the court, so that the lawsuit could be brought against the actual owner of the infringing domain name.

4. The current situation of legislation in the field of privacy protection and personal data protection in the 10 surveyed countries or regions.

The disclosure of the personal information in the WHOIS data for the ccTLDs is very likely subject to privacy protection laws or data protection laws in many countries, so our survey also covered this field. It was noted that all the 10 surveyed countries or regions have or will soon have their own privacy protection laws or personal data protection laws. Details are listed in Attachment 1.

5. From our survey, we noted some features for some ccTLDs, details are listed below. The features in points 5-7 are good practices and can be promoted to other countries or regions, whereas the features in points 1-4 are practices that can be improved.
- 1) All the surveyed countries or regions have their own domain name dispute resolution policies for their ccTLDs except Kazakhstan and Uzbekistan, where the disputes have to be solved through judicial body.
  - 2) There is no time limitation under UDRP to initiate the dispute resolution procedure, whereas CNDRP (for .cn domain name) has a three years' time limitation.
  - 3) The remedy under UDRP is that the domain name is deleted or transferred, whereas the only remedy available is deletion of the domain under the NZDRP (for .nz domain name), and transfer of the domain under HKDRP (for .hk domain name).
  - 4) The legal basis under UDRP includes prior registered or unregistered trademarks, and include not only identical but similar trademarks, whereas the legal basis under PNGUT's complaint policy (for .pg domain name) includes only **identical** and **registered** PNG trademark. If the complainant asserts that the domain name infringes other IP rights (e.g., unregistered trade marks), the complainant cannot rely on PNGUT's complaint policy, but have to obtain a court order or arbitrator's judgement that the domain name must be cancelled.
  - 5) UDRP requires the complainant to show use AND registration of the domain name in bad faith, whereas AUDRP (.au), CNDRP (.cn), MYDRP (.my) requires to show use OR registration in bad faith.
  - 6) UDRP regards only prior trademark right as legal basis, whereas CNDRP (.cn), HKDRP (.hk), AUDRP (.au) and NZDRP (.nz) regards not only trademark right, but also other civil rights such as trade name or personal name right as legal basis. Company names and personal names can also be used as legal basis against identical or similar domain names in Kazakhstan and Uzbekistan in the legal proceeding, though Kazakhstan and Uzbekistan do not have their own domain name dispute resolution policies and the disputes have to be solved through judicial body.

- 7) UDRP requires the complainant to show that the respondent has no rights or legitimate interest in respect of the domain name, whereas MYDRP (.my) requires the respondent to prove that he/she has the rights and a legitimate interest in the domain name.

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Xianjie Ding	King & Wood Mallesons in China	Hong Kong
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	Tai E International Patent & Law Office	Taiwan
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Attachment 1: Legislation of Privacy Protection Law or Data Protection Law in the 10 surveyed countries or regions

- 1) Australia: *Privacy Act 1988* (Cth) (<https://www.legislation.gov.au/Series/C2004A03712>).
- 2) Hong Kong: *Personal Data (Privacy) Ordinance, Laws of Hong Kong (Cap 486) (PDPO) # 2013* (<https://www.elegislation.gov.hk/hk/cap486>)
- 3) India: Electronic data protection in India is currently governed by the Indian Penal Code, the Information Technology Act 2000, and the Information Technology Rules, first introduced in 2011.  
The second draft of *Personal Data Protection Act* (PDPA) (<http://www.pdpa2019.in/>) was approved by the government on December 4, 2019 but is currently under review and not in force.
- 4) Kazakhstan: *The Law On Personal Data and their Protection* 2017 ([https://online.zakon.kz/Document/?doc\\_id=34403568#activate\\_doc=2](https://online.zakon.kz/Document/?doc_id=34403568#activate_doc=2))
- 5) Mainland China: *Cyber Security Law* ([http://www.gov.cn/xinwen/2016-11/07/content\\_5129723.htm](http://www.gov.cn/xinwen/2016-11/07/content_5129723.htm))  
*Data Security Law* (<https://digichina.stanford.edu/news/translation-data-security-law-peoples-republic-china>)  
*Personal Information Protection Act* (<https://digichina.stanford.edu/news/translation-personal-information-protection-law-peoples-republic-china-effective-nov-1-2021>)
- 6) Malaysia: *Personal Data Protection Act 2010* (<https://www.kkmm.gov.my/pdf/Personal%20Data%20Protection%20Act%202010.pdf>).
- 7) New Zealand: *Privacy Act 1993* (<https://www.legislation.govt.nz/act/public/1993/0028/latest/DLM296639.html>).
- 8) Papua New Guinea: *Protection of Private Communications Act* ([http://www.paclii.org/cgi-bin/sinodisp/pg/legis/PG-consol\\_act\\_1986/popca404/index.html?stem=&synonyms=&query=privacy](http://www.paclii.org/cgi-bin/sinodisp/pg/legis/PG-consol_act_1986/popca404/index.html?stem=&synonyms=&query=privacy)).
- 9) Taiwan: *Personal Data Protection Act of Taiwan* (<https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=I0050021>).
- 10) Uzbekistan: *The Law of the Republic of Uzbekistan on Personal Data* 2019 (<https://lex.uz/docs/4396428>).