ICANN70 | Virtual Community Forum - GAC Discussion RDS/WHOIS and Data Protection
Monday, March 22, 2021 - 12:30 to 13:15 EST

JULIA CHARVOLEN: Welcome to the ICANN70 GAC session RDS/WHOIS and Data Protection held on Monday, 22 March, 1730 UTC. We will not do a roll call. Please indicate your presence by updating participant name to reflect full name and affiliation.

If you would like to ask a question or make a comment (reading) -- interpretation for GAC sessions include all six UN languages and Portuguese, click on the interpretation icon located in the Zoom tool bar. The microphones will be muted unless in the queue to speak. When speaking, please state your name for the record and the language you will speak and speak clearly and at a reasonable pace and mute all other devices. Finally, this session, like all other ICANN activities, is governed by the ICANN expected standards of behavior. You will find the link in chat for reference.

With that, I would like to turn it over to the GAC chair, Manal Ismail.

MANAL ISMAIL, GAC CHAIR:	Thank you very much, Julia, and welcome back everyone. Time for our discussion on RDS WHOIS and data protection and discussion scheduled for 45 minutes. So without further ado, I will hand it over to our topic leads, Laureen Kapin, Chris Lewis-Evans from UK, Velimira Nemiguentcheva-Grau -- I hope I pronounced it right, and Melina Strougni from European Commission. So without further ado, allow me to hand it over. Not sure who will start. Laureen, please.
LAUREEN KAPIN:	I will start, a warm hello to my colleagues across the world in varying zones. Glad you could join us for the presentation. Don't have a lot of time and have a lot of material to cover. Folks with questions, we will hold those and take questions at the end so write down your questions so you can make sure to remember them, and we will take those at the end of the discussion. So we will give you an overview of the expedited policy development process, and as folks know, this has been a multi phased process, so Phase 1 which has ended and

now in implementation, Phase 2 which has resulted in a final report, and a GNSO Council approval of the recommendations and we're now in the midst of the proceedings between the GNSO's decision and an ultimate Board proceeding. Phase 2a, progress on natural versus legal and unique anonymized context, currently midway in the process there, very streamlined, hoping not too streamlined. And finally in the category of next chapters, accuracy of gTLD registration data which as many know, has been a priority topic for the GAC. We will be talking about next steps, overall timeline and opportunities for GAC [indiscernible].

So an overview of the process, and I have gone through this somewhat on the first slide, so I will go through it rapidly. But by way of context, this expedited process was begun as a result of the European privacy laws general data protection regulation. Those new laws made it imperative for ICANN contracts to change in order to be in compliance with those laws, and that resulted in somewhat of an emergency process, the use of a temporary specification, and that is now incorporated into current policy.

ICANN|70
VIRTUAL COMMUNITY FORUM

Phase 1 laid out foundations for this new policy, and most of the policy recommendations in Phase 1 were adopted by the Board, and we are now in implementation of those recommendations. As I said, Phase 2 resulted in a final report, it is to be noted that the GAC and several other stakeholder groups submitted minority statements expressing concerns with certain recommendations set forth in that final report, and if folks would like to become familiar with those, you can consult annex E of the final report where all the minority statements are set forth including the GAC's.

The GNSO Council adopted the recommendations of the Phase 2 report, and there is now a process in between the GNSO Council's recommendation and the ICANN Board's consideration, and that is the operational design phase, and ICANN org always been done but another somewhat more formalized. And that is the operational design phase. Once that concluded, that will provide information to aid the Board in its considerations and also at that point in time if the GAC were to have public policy concerns with the recommendations, which it has signaled it has the minority report, that would be the time to express those

formally. And then again Phase 2a, and that has focused on two primary issues, the treatment of data of legal entities and the use of anonymized or pseudonymized emails.

I am happy to pass the baton to Chris Lewis-Evans. Chris and I and Velimira and Melina have been participating in GAC participation in these policy efforts. In Phase 1, the implementation challenges, the IRT, Chris and I have been in particular participating in that effort.

CHRIS LEWIS-EVANS: Thank you, Laureen. Chris Lewis-Evans, for the record. I just want want to go through an update of where we are in Phase 1 of the implementation and major points we are looking at. So the IRT started in May 2019, quite some time ago now. And I will speak to why that is important later and as Laureen says, both herself and me have been representing the GAC throughout that time. There has been quite numerous meetings going on, and also been some studies around how release of details such as the city field might affect the registrant and personal

ICANN|70
VIRTUAL COMMUNITY FORUM

information, and there are still quite a number of items that still need to be worked out.

I think one of the major things at the moment is a data protection impact assessment carried out between the registrars and registries and ICANN, and I think there are three more to do of this. And the IRT team has asked that they see this before releasing a final report -- or implementation guidance. So we still have some time to go.

One of the other issues of importance for ourselves is the time frame for which an urgent response comes back to us, and it is important in the implementation phase as in the policy recommendations, it was stipulated that that would be decided upon by the implementation team. So for the public safety working group, this is obviously a matter of utmost importance that we are able to get access to the data as quickly as possible for investigations, especially when it has possible threat to life implications. I think some positive steps over the last few meetings and hopefully we will get some position moved forward on that soon. And sorry, I did misspeak, I think they are

ICANN|70
VIRTUAL COMMUNITY FORUM

working on a data processing agreement rather than a data protection impact assessment but that would also be done at the same time.

So moving on to the timeline, as we said, this started in 2019 in the Montreal advice, November of that year and the GAC had in their communique that ICANN should generate a data work plan, identify the schedule and how when this work will be completed. The Board accepted the advice early in 2020 and stipulated that that would be published. However, there is currently no scheduled completion for publication of an implementation plan. This has been raised a number of times within the meetings and we have yet to receive one on that -- so something to look at later.

Next slide, please. So two other major items for us that have been impacted upon by work within the Phase 1, first of those is the privacy proxy service accreditation policy and implementation, PPSAI, not sure which easier to say, neither roll off the tongue easily. So the privacy proxy services accreditation policy and implementation has appeared numerous times in communiques as follow-up

EN

advice or initial advice and that is because the way the service is currently carried out, we see this being utilized numerous times by criminals to register their domains and has a real impact on the ability of the public safety teams to be able to carry out their work.

The requests that we have put in the communiques has been to carry on with the implementation as it was finished. ICANN org had received the advice and stated that there may be impact within the Phase 1 and Phase 2 recommendations and that they wanted to find out the level of that impact were they continued with that. We are expecting the GNSO Council to discuss that during this meeting, and that will happen on Wednesday, so that will be of great interest for us.

The second part that has come up fairly recently is the impact on the PIC WHOIS policy. For those in the GAC who have been around for time, this is a policy that we have covered quite extensively and well before my time, to back to 2014, and it is a recommendation that has been moving forward albeit rather slowly and as highlighted there, the

ICANN|70
VIRTUAL COMMUNITY FORUM

ICANN Board deferred the enforcement until completion of this.

During the IRT, the GNSO Council determined that the recommendations within Phase 1 do make a change to the PIC WHOIS policy and have communicated this to the Board and are waiting for the Board's confirmation that they accept this. This is one that I think needs a little bit of extra work that we are had that happy to continue to do to see how that impacts the data that is collected and transferred from registrars to registries, but considering the previous advice, I think it is one we need to keep a careful watch on. And with that, we'll go to the next slide and hand it over.

LAUREEN KAPIN: Thank you, Chris. This is, just to give you a visual of the level of consensus and lack thereof on the Phase 2 recommendations, you can see that there are several recommendations, several important recommendations. I might add that did achieve full consensus in the green boxes, but there are several that had significant opposition and even divergence. So we wanted to give

you this visual. There were a variety of views and opinions on the Phase 2 recommendations, and you will have this in the slides for your reference.

Next slide, please. To give you a little more of a drill down towards the GAC's particular concern, that is set forth in our minority statement, the result of extensive [indiscernible] within the GAC. Able to reach a consensus in setting fort this statement but the concerns at a high level were that the recommendations concluded with a fragmented rather than centralized disclosure system and that reflects the reality that individual registrars are going to be making decisions about whether or not to disclose data. And that is not to say that there aren't certain advantages that go along with that and certain registrar colleagues feel more comfortable with that, but hundreds of thousands of registrars making their own decisions not centralized, didn't include standards to review disclosure decisions, and there has been correspondence about this point and in fact the review-ability of those decisions indeed challenging.

ICANN|70
VIRTUAL COMMUNITY FORUM

We also flagged that the recommendations didn't sufficiently address consumer protection and consumer trust concerns, and in terms of the ability of the system to change over time -- because we know the law may change, and indeed, we will hear a little bit later there are current proposals coming out of the European Union that would change the law that would impact this -- we do not believe the current mechanism to allow the system to in response to increase clarity that it was sufficiently reliable and robust to be able to do that. And financially, there were financial concerns about how this would be financed, how it would [indiscernible] the users intended to benefit and how it would sustain itself with a particular focus on perhaps the disproportionate costs to the users who detect and act on cyber security threats. The GAC was not alone in their concerns. The ALAC, SSAC, [indiscernible] among others, and in particular the ALAC flagged a concern about adopted non-consensus policy recommendations as the IPC and bc voted against these recommendations. So in fact the GNSO approved some non-consensus recommendation. We will note that the IPC has repeatedly corresponded with the ICANN Board proposing that the consideration of the Phase 2

recommendations be stopped, halted, due to the lack of consensus and emerging regulations from the European Commission coming out, and we will refer to this as the NIS2 directive.

A quick overview of where we are right now, the ICANN Board is due to launch its operational design phase. We had flagged that a little bit earlier, and there have been discussions by ICANN and input from the GAC on this phase. And just procedurally so you know, upon completion of that operational design phase, the ICANN Board will consider whether the recommendations are in the best interest of the ICANN community. So the operational design phase is really designed to support the Board's deliberations here. And I already referred to our IP colleague's request from ICANN -- sorry, our IP colleague's request that ICANN pause the operational design phase and further work due to the concerns that I mentioned previously.

Now we are coming to a discussion of Phase 2a progress on legal versus natural. So now as opposed to looking primarily backwards where we're coming to the present

ICANN|70
VIRTUAL COMMUNITY FORUM

work that is going on. This is a very streamlined process that began in December and is actually reaching a milestone this March where a report will be given to the GNSO which will decide whether the work should continue, and we are at this point cautiously optimistic that the work will continue but here is where we are now. The Phase 2a focusing on the treatment of data from legal persons. And to provide what I hope is some useful context, the GDPR only protects the data of natural persons, not legal persons and more precisely, only personal information is protected. If it's not personal information, then it is not protected under the GDPR.

Under phase 1 in recommendation 17, the contracted parties are given the option of whether to differentiate between the administrations of legal and natural persons but they don't have to, not obligated to, and the GAC has consistently provided input that it would be very useful for law enforcement, cyber security folks who are helping to maintain the security and resiliency of the DNS, IP rights holders and even the public at large that wants to know who they are dealing with when engaging in transactions on the Internet, that it would be very useful to have the

EN

information of legal persons which isn't necessarily protected under the GDPR, to remain publicly accessible.

So in this Phase 2a process in the part focusing on the treatment of data from legal entities, the GAC representatives and that has consisted in terms of active members, Chris, Velimira, Melina, and myself, we have crafted a proposed process to try and achieve this distinction while minimizing risks to the data subjects, registrants, i.e., don't want them to get it wrong, we want them to understand what they're doing when they identify as either a natural or legal person, and contracted parties, because they have liability, risks, and concerns also.

I want to share with my GAC colleagues that these considerations that fed into our process, we focused very carefully on the legal advice, in fact that ICANN had commissioned to provide guidance on how to mitigate risks in this regard. And so the process that we have proposed focuses on, one, letting registrants know that they can identify as either a natural or legal person, and telling them what that is, letting them know that if they identify as a legal person, they are advised not to provide

ICANN|70
VIRTUAL COMMUNITY FORUM

personal information in their registration data, and also letting them know what happens if they do identify as a legal entity, that is, that their registration data will be publicly disclosed. And then finally, if any mistakes are made, that they would have the opportunity to correct those mistakes.

I want to pass along to my colleague Melina Strougni to underscore her views on the proposals consistently with the GDPR, she is from the European Commission and actually focuses on privacy issues with her work.

MELINA STROUGNI: Thank you, Laureen, and hi, everyone. So indeed, I have a data privacy background, and I work with the European Commission. Been following closely the Phase 2a process as a member of the GAC and planning to also follow the [indiscernible] together with my colleague Velimira Nemiguentcheva-Grau who will present later.

So on Phase 2a, indeed as Laureen explained, our GAC proposal supports the idea that by distinguishing between natural and legal persons, more non-personal data would

be publicly available and would clearly serve the public interest while at the same time respecting the privacy of individuals. So in that respect the GAC proposal fully compliant with the GDPR. And as Laureen indicated, the GDPR applies to natural persons, does not convert the processing of data which concerns legal person, including name and form details of the legal person. Yet, and this is a point also raised by the contracted authorities, there may be occasions where data of a legal entity may contain personal data. For example, I have a corporate address and home address or my corporate address entails my first and last name, so to fully protect personal data, our proposal follows a two-step approaches should distinguish between natural and legal. If natural, no data public. If legal, we move to step two, and a further distinction should be made between data of a legal person personal and data which are not personal and only non-personal data should be published.

So note that this is a minimum requirement which means of course this contracted parties wish to provide to the registrants the possibility to choose whether they also want their personal data published, they can resort to

additional consent mechanism but if not legal [indiscernible] not only in line with the GDPR but -- according to article 23 of the proposal, [reading] as Laureen pointed out the publication requirements very important for WHOIS, having complete databases of the main name and registration data is essential for the security and stability of the DNS and -- GDPR not only redacted information relating to [indiscernible] data.

During the EPDP Phase 2a, doing best to remain constructive, taken into account various concerns of the contracted parties such liability risks or regarding the nature of data, regarding the [indiscernible] of the different business models in which the contracted parties operate and the concerns we have tried to address them in our proposal. And of course we are happy to further adjust and take into account the need for [indiscernible] we felt, however, losing site of this goal, the [indiscernible] by the two-step approach that we are proposing so we hope the work on EPDP Phase 2a will continue as it is very important to make some progress. Thank you, and back to you, Laureen.

LAUREEN KAPIN: Thank you, Melina. And it's important to note that the legal team that is a sub part of the Phase 2a process has recently agreed upon questions to ask for further input and we anticipate that would be very useful in our deliberations and as I said, we are really working closely with our colleagues in the contracted party house and also the non-commercial stakeholder group to really listen to their concerns and make adjustments that we think are consistent with achieving the right balance between protecting privacy and also allowing information which is not protected under the GDPR, to remain public.

And I will hand it over to Chris because the other part of Phase 2a focusing on anonymized or pseudonymized email. And naturally we are already behind time, so note to self and my colleagues, try and pick up the pace, not of our speaking but of how we progress through the slide.

CHRIS LEWIS-EVANS: Thanks, Laureen. So as mentioned, the second part of the Phase 2a process revolves around the publication of a unique contact which is the email address related to the

ICANN|70
VIRTUAL COMMUNITY FORUM

registrant. So we will not spend at which time on this compared to the legal versus natural person, but I think a couple of the key aspects are whether an email address can be anonymized, so obviously a registrar will always hold all the details so anonymizing an email address to hem not possible so therefore to them it is pseudonymized. However, to the outside world that could be anonymized. And it is with that metric, the GAC group looking at whether this could be published under GDPR, and we believe it could be.

I think what is important for us now to concentrate on as the work continues in Phase 2a is how that publication of anonymized email address might impact the [indiscernible] and certainly something we will look at and the legal team, as Laureen has mentioned, will probably look at that and the impact of the publication of the email address. So considering time, can we go to the next slide, please.

LAUREEN KAPIN: Yeah, and this will just be a very quick overview. As I mentioned, the GNSO Council will be reviewing our work

to make sure that further discussion is productive. And that [indiscernible] practical concern. If there is no chance we will come up with anything we can agree on, there is no point in us continuing. But as I said, our discussions, particularly most recently, I think have been very productive and I think that the stakeholder groups are really trying hard to listen to one another and show some flexibility, so I am hopeful we will be able to come up with something.

So the GNSO Council will be getting an update from Keith Drazek, our chair on this phase, and kudos to Keith who has really been very, very constructive and creative in his leadership of the team and has really encouraged us to try and look at this in new ways and listen to one another, and that has been very, very helpful.

The next opportunity for discussion of this matter by the GAC will be during our meeting with the GNSO which will be on Wednesday. And with that, we can move to the next slide. And this is going to discuss some accuracy which has been a topic of importance to the GAC for many, many

ICANN|70
VIRTUAL COMMUNITY FORUM

years, if not perhaps decades [chuckling], and I want to pass that onto my EU colleagues, Melina and Velimira.

VELIMIRA GRAU: Thank you very much, Laureen and Chris, for the presentation so far. Given that this is the first time I am meeting some of GAC colleagues across the world and also some of the ICANN community colleagues, just allow me to say that I am very much looking forward to working together with you. So today I will be presenting to you some of the latest developments around the accuracy issue. Having said this, I see that I have some [indiscernible] problems, so allow me to switch off my camera.

Yes. So as you would recall but also as mentioned by Manal this morning, according to the EPDP conclusions, a scoping team has to be formed in order to explore the issues around accuracy with [indiscernible] informing the decisions on the next steps on this topic. And as Laureen mentioned earlier, that stressed the importance of accuracy in the EPDP minority statement and also the

need to address accuracy concerns was reiterated in the GAC ICANN69 communique.

Some data actually that we have at our disposal suggests that there is an accuracy rate of at least 30 percent with only 13.5 percent domains having an actual registrant identified in WHOIS. And from the public interest perspective, these are somewhat worrying figures given the importance of accurate data for the secure and resilient DNS and this was also stressed in the recent stability, security, and resiliency report which provides insight into the link between accuracy of registration data and stability security and resiliency of the Internet.

Now, what is an important first step towards scoping effort is the ICANN org briefing paper. This paper was issued at the end of February, and it provides a very precise overview of the different accuracy requirements such as you find in different contract terms, consensus policy and ICANN programs. The briefing also assesses the effect GDPR and subsequent ICANN registration and data policy has on accuracy requirements and implementation and actually the briefing finds that such effect rather

limited. However, what is important to stress today is that with regards to the accuracy reporting system, the briefing also shows that it was rather heavily impacted by GDPR and effort to implement it within ICANN and the report shows that [indiscernible] reports were not actually issued since June of 2018. And basically the main reason for this seemed to be the fact that GDPR implementation resulted in hesitation by some parties to provide certain registration data to ICANN for the purpose of carrying its accuracy checks and this of course resulted in a reduced amount of publicly available data which is an issue from the perspective of the accuracy reporting system, because the accuracy reporting system has been relying so far on [indiscernible] available data.

So what this initial for the reporting system is that it cannot any longer collect a representative sample of data to be analyzed and measured. So again, with that background, ICANN org suggests [indiscernible] on how to measure accuracy. So basically the point is whether the accuracy should be measured through publicly available data only or also through accessing non-public registration data and in accordance also with the brief,

such a study could provide a snapshot of accuracy as it currently stands.

So my time, what I wanted to share is that in the light of this briefing and the suggestions to go for a study, it would be worth it for us, for the GAC, to reflect upon what the precise scope of such a study should be and then we can build upon the brief insights and given mainly the importance of accurate data for law enforcement purposes, the extent of the scope of the study shouldn't be defined in a broad way but in a way that such a study could fit into a policy development process and at the same time, having such a study and policy development process, it would remain important, no doubt, to ensure that in the short term compliance is really guaranteed to meet accuracy requirements.

So we hope these observations could be somewhat the starting point for our exchanges this week on the accuracy topic, and with this, I hand it back over to Laureen and Chris.

CHRIS LEWIS-EVANS: Thank you very much. Next slide, please. So we have shared a number of timelines with you in the past, and this is just a simplified, would you believe, and updated timeline just for reference. And really, the main purpose of this is to show you some of the impact on all the different phases that we have just gone over and to give you an idea of when we can see changes within the WHOIS side as a result of the policy work that is going on.

I think really the main point here is the lack of any end times on the work that is ongoing, and it also highlights some of the interdependencies and going across the different phases there. So with that, I want to finish and quickly open the floor to questions.

MANAL ISMAIL, GAC CHAIR: I already see Kavouss' hand up, Chris.

CHRIS LEWIS-EVANS: Thank you, Manal. Kavouss, over to you, please.

ICANN|70
VIRTUAL COMMUNITY FORUM

IRAN:
As usual, thank you very much. What I said, I want to say that I am a person with average supporting material. So my brain is overloaded, and the brains of many persons at this meeting are overloaded. I think we have to look at how we address these issues of such a complexity future. You are starting to have four subjects, at least, one after the other without any time for reflection or reaction or questions or interactions. It is not your fault but it is the fault of the time and management of the timing, so we have to review that totally.

There are 193 countries, 206 countries and territories, and I don't know, 175 or 178 GAC members but not all of them are the European Union, UK, and United States. There are many other different people with different requirements and understanding of the data protection and all of the access and so on, so forth, and I don't think that would cover the points of everybody. So we have to see what we can do with this [indiscernible].

What I suggest or expected, thank you very much for all the material made available, but you bring the subject of

ICANN|70
VIRTUAL COMMUNITY FORUM

asking first what is your expectation from this meeting, on the issue of these subjects from the GAC? Sending communique to or advice to the ICANN Board? Sending a letter to ICANN Board? What we can do? You said that [indiscernible] and all the recommendation be stopped so what is the reaction of the ICANN Board? We don't know, it is not mentioned.

And this natural versus legal, I think it is very, very difficult subject. And I don't know where we go, and we expected at least we concentrate on Phase 2a [indiscernible] Phase 1 and Phase 2, and you said the recommendation by the Board, the recommendations before the Board would be discussed whether in the interest of the -- you said the interest of the ICANN community, interest of ICANN, I don't know which ICANN you mean, ICANN Board or ICANN org and so on, and what is the definition of interest of community has never been able to see versus the interest. So you can take out anything you want in the name of interest of the community and so on, so forth. So the issue is very, very complex.

And this GDPR has become one of the most complex issues before from 2019 up to now and I don't know where we go. It took a lot of our attention from the main point we have to put these things to see whether natural versus legal is whether [indiscernible] GDPR does not have anything about the legal person, natural person, so we have to see where we go and what is the purpose of this thing, and we have to be very, very careful what we do. It's very difficult, and I have some doubts that we have the proper course of action rather than repeating what we have said before. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Kavouss, we're already over time. Any quick reactions from our topic leads to Kavouss in one minute before we move to the preparation for the Board meeting?

LAUREEN KAPIN: I want to thank Kavouss for his comments. I absolutely agree, the topics are very complicated, and regrettably we don't have the time to have the ideal interactive, more luxurious way to deal with them during the meetings.

Perhaps we can come up within some creative thinking to do some inter-sessional work to allow further engagement, we certainly would welcome that.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Laureen, Chris, Velimira, Melina, and everyone. This concludes our WHOIS and data protection discussion, for today at least. Please give us a minute to start our Board preparation session, and please let me know when we're ready to start. Thank you.

[END OD TRANSCRIPT]

ICANN|70
VIRTUAL COMMUNITY FORUM