ICANN72 | Virtual Annual General Meeting - GAC Discussion: WHOIS and Data Protection
Tuesday, October 26, 2021 - 16:30 to 17:30 PDT

GULTEN TEPE: Good morning, good afternoon, and good evening.

Welcome to the ICANN72 GAC meeting on RDS/WHOIS and Data Protection on the 26th of October at 2330UTC. Recognizing that these are public sessions and other members of the ICANN community may be in attendance the GAC leadership and support staff encourage all of you who are GAC representatives to type your name and affiliation in the participation chat box to keep accurate attendance records.

If you would like to ask a question or make a comment, please type it in the chat. The feature is located at the bottom of your Zoom window by starting and ending your sentence with a question or comment as indicated in the chat. Interpretation for GAC sessions include all 6 UN language and Portuguese. Participants can select the language they wish to speak or listen to by clicking on the interpretation icon located on the Zoom tool bar.

If you wish to speak, please raise your hand. Once the session facilitator calls upon you, please unmute yourself and take the floor. Remember to state your name and the language you will speak if you will be speaking a language other than English. Speak clearly and at a reasonable pace to allow for accurate interpretation. Please make sure to mute all other devices when you're speaking.

Finally this session, like all other ICANN activities is governed by the ICANN Expected Standards of Behaviour. In case of a disruption during the session, our technical support team will mute all participants. With that, I would like to leave the floor to GAC Chair, Manal Ismail.

Manal, over to you.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Gulten, and welcome back everyone. I hope you enjoyed this long break. The coming hour is dedicated to RDS WHOIS and data protection, and we will be receiving a presentation from Laureen Kapin, and Melina Stroungi from the European Commission.

So without further ado, allow me to hand it over to I assume Laureen, you will get us started?

LAUREEN KAPIN: Yes, I will get us started. And I'm not positive Melina has joined.

MELINA STROUNGI: I'm here.

LAUREEN KAPIN: Yay, now I can rest easy. Terrific. So Melina and I will be presenting on WHOIS and data protection policy. I anticipate we will have ample time for questions, and we will -- let's move on to the next slide.

Here is our roadmap for going forward. We're going to divide this into two topics. Most of our time actually will be spent on the first topic, effective and compliant gTLD registration data services, why it's important to the GAC, current concerns and possible next steps. And then in our more recent activities, we will discuss the accuracy of gTLD registration data, updates for you since ICANN 71, and some insights the actual work of the scoping team on gTLD registration data which has had very specific guidance and instructions from the GNSO Council, and my colleague Melina will be discussing that work as she and another representative from the United States, Ryan (indiscernible), are participating in this work also with some backup from a small group

So we will start, and we do this because, although these topics are very familiar with some of our GAC colleagues, they are new to others, so we like to try and lay a foundation for why this issue is important. So to review a little bit, gTLD registration data and data protection are important for two primary reasons. First, this information lets law enforcement and those who enforce the law and DNS abuse and cybercrimes, this information very key for those activities.

In addition to governmental authorities, this information is also important to businesses and other organizations who themselves combat fraud and safeguard the interests of the public, and they also have intellectual property rights they're interested in protecting. And so when there is a website that perhaps for example is engaging in a deceptive activity, trying to look like their company's website, they want to know who is behind that website, and that is an example of why this is important to businesses related to intellectual property

And then there are you and I, the public who, who want to have confidence when we engage in our Internet activities, whether that's communication or a purchase or other type of transaction where we are spending money or providing sensitive information.

And of course the other side of this issue is protecting privacy. We want to make sure that privacy rights are also protected and that

privacy laws are complied with. So when data protection regulation, which we will refer to as GDPR was enacted, there had to be certain changes to comply with the registration data which have been previously and easily available was stow a change in policy and personal information, for example like a name, email address, physical address, phone number, was no longer public for the most part but even though there were these changes to current policies, that started a very specific and now ongoing policy process to determine what the contours of that policy should be, more specifically, when should there should be access to that non-public data.

But notwithstanding, these policy changes and ongoing policy efforts, there are certain principles the GAC has still advised the ICANN Board to consider, and that is keeping WHOIS quickly accessible for security and stability purposes, and we think current lie that means quickly accessible for lawful purposes for those who need to have access to that information and keeping WHOIS accessible to the public, like businesses and organizations

So that doesn't mean a return to the way it was, everything being publicly available. What it means is that there should be effective mechanisms to gain access to this information for lawful purposes.

Next slide, please. So this is focusing on some GAC concerns with the outcomes of more recent policy efforts. In the expedited policy development phase, that is what EPDP stands for, Phase 2, Phase 2 really focused on what system shall we use to provide for standardized access and disclosure you are, SSAD, that is what abbreviation stands for. And there were considerable work and lots of thinking and debate and discussion and hard thinking about these issues. And the GAC participated in that process. But nevertheless, at the end of the day, although there were many beneficial recommendations in that phase, the GAC also had certain concerns which it expressed in its minority statement. And those included that the system that was recommended created a fragmented rather than centralized disclosure system, and that is primarily because the -- over 1200 registrars and in some cases, limited cases registries -- each were going to be making their own independent decisions about how to and whether to disclose that information. And there are good reasons for that, because they are subject to certain legal risks. But will nevertheless, it doesn't create consistency.

There was also a lack of enforceable standards to review disclosure decisions. And although we always assume good intent and that these decisions are going to be made in conformance with the law and in good faith, there nevertheless the remains the possibility that there could be behavior that isn't

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consistent with those principles, so there needs to be enforceable standards to review disclosure decisions

For example in the case and I would hope a hypothetical case, but if there were a registrar that would never grant a request for disclosure, even if it was a legitimate request that was justified, that would be problematic, so there need to be standards to disclosure decisions

There was also the review that the recommendations didn't sufficiently address consumer decision and trust concerns, particularly with the timetables requests related to consumer protection concerns, that there weren't sufficient mechanisms to envelope in response to increased legal clarity, and in this regard there was a concern that very limited categories were subjected to an automated response and there weren't mechanisms in place to increase those categories, if indeed the law evolved to justify that type of automation

And then finally, there was a concern that essentially this system might cost too much for the very people who wanted to use it. The GAC was not the only stakeholder group that issued a minority statement, and there were others who shared these concerns

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Moving on to Phase 2a, which was the most recent policy development process, this focused on how should we treat registration data not from people who register domains but businesses and organizations who register domains and those are referred to as legal as opposed to natural entities. So not a person but a corporation or company

And the impetus behind focusing on this particular issue was the fact that the GDPR protects personal information, i.e., information related to people, not information relate to companies. But this is not something that is straightforward in a particular respect, because sometimes the registration data of a legal entity itself can include personal information. So you start with a straightforward premise, i.e., that the GDPR protects personal information, not the information of legal entities, but then you do have to engage in further analysis

And the Phase 2a process was focused on how should this data be treated? What could be published consistent with the law, and what should remain non-public? This Phase 2a nevertheless came to some conclusions that the GAC had concerns with

I do want to first highlight the positive aspects, however. The Phase 2a recommendations did include creating a data field so you could flag at the outset whether the registrant was a legal entity or a natural entity, and that is a good infrastructure or

foundation for any decision making. It also included very specific guidance on when safeguards should be applied to protect personal information, and indeed, these were informed by the legal advice that ICANN commissioned for this very policy development process, and the stakeholder, including the GAC, were very much informed by that legal advice when they proposed certain safeguards. So this is guidance to those registrars who choose to make this differentiation in their treatment

There was also encouragement to follow legislative developments, because they might require changes to exist registration data -- and also provided guidance on the second focus of Phase 2a, which was the use of pseudonymized emails, could you publish a pseudonymized email. And there was -- nevertheless, the GAC remained concerned that almost none of these final recommendations created enforceable obligations, and it fell short of the GAC's expectations that would require the publication of domain name registration data that isn't protected. So you have the positive and then the concerns here.

In terms of timing, we do have concerns. For our Phase 1 implementation, that started in May 2019, and Phase 1 of course is the phase that preceded Phase 2 in 2019, and there is still an unknown as to when that will be completed. I will note that the

GAC has given advice in Montreal at its ICANN 71 communique about this topic, seeking a more specific timeline

Phase 2 was completed in July of 2020, and ICANN org is conducted work on an ODP which stands for Operational Design Phase that was expect today conclude in September 2021 -- I think we're going to be getting more information on that effort shortly. And implementation for Phase 2 is likely to be as challenging for Phase 1, because it's also quite complicated. So we anticipate the timelines might be challenging there as well

The Phase 2a recommendations are actually subject to a GNSO Council vote which I believe takes place tomorrow. So we are in a bit of a holding pattern on action for a lot of these efforts. Which is a concern of the GAC, because in the meanwhile, the current systems can be a bit challenging for those who wish to obtain access to non-public registration data.

This is a visual to help you get a little bit more of the sense of the timelines. You will see that for EPDP Phase 1 at the very top, actually the temporary specification is at the top, in place right now, Phase 1 subject to implementation, you will see the red arrow timeline question mark at the top. For EPDP Phase 2, again, that is still awaiting the completion of the Operational Design Phase, and then those will be to the Board and proceed to implementation, those are in the future, and you will see the

Operational Design Phase is expected shortly. So that is where we are. There are a number of question marks on this chart, and I think that is the primary concern in terms of timing. Next slide, please

So this is a recap of current concerns. We have talked, again, about the timing so I won't go over that one more time. And then we have some outcomes that raise certain concerns also. In addition to the concerns that we have already raised in our Phase 2 minority report, there have been outcomes related to these issues, one the suspension of the implementation of the privacy proxy services accreditation process. Those are services that a registrant can choose to use so that their personal information is not listed as the registrant, but another entity's is listed in their place, and that would be the privacy proxy service provider. And the privacy proxy service's accreditation process provided standards for how those organizations need to work and certain principles they need to abide by, and that has been suspended. We are hoping, and the GAC has issued advice on this, that this will remove

We already talked about the minority report. Another related concern deals with the fact that ICANN's accuracy reporting system initiative is also no longer -- is no longer active as a result of ICANN's inability to access all the gTLD -- registration data. A concern because that process produced some useful information

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on the accuracy of domain name registration data in terms of whether it was accurate regarding its syntax and its operability, but it had as a follow-up phase, identified going onto actually measuring whether the information itself was accurate in terms of identifying the actual person behind the domain name.

And when we refer to accuracy, I refer to that as true accuracy, because you know that the domain name registrant information is indeed correct, that the information given actually relates to the person behind the domain name or the company behind the domain name. That was not able to continue. Fortunately, there is now work going on in terms of scoping policy development processes dealing with registrant data and the accuracy of that data, and we're hopeful that work can be done to focus attention on this issue

As many on this presentation know, DNS abuse has been a big topic of concern to the GAC, and we know from our operational experts, the law enforcement folks on the front lines of investigating domain name abuse, they tell us that one of the most important issues to dealing with domain name abuse for and deterrent -- is accurate information -- because the bad guys and gals do not like to be known and if you are coming up with a system that requires accurate information, that is a real deterrent for folks who wish to engage in illegal behavior

So that is an overview of current concerns regarding registrant data and registration data services. Next slide, please. What I want to focus on now are some possible next steps for the GAC for consideration. First of all, there is currently a survey out that is related to the Operational Design Phase, and this survey focuses on accrediting governmental authorities when they want to seek access for domain name registration data. And one of the recommendations in Phase 2 essentially said that each country is going to need to be in charge of accrediting its governmental authorities, because each country would be an expert on its own systems and how to come up with a system to identify who is legitimately a government requestor for such information.

And I understand that a response to that survey has been challenging for some countries and some GAC members, and what I would encourage you to do is to answer what you can. You may not be able to answer all those questions, but I would guess, and I think based on my view of the questions, that you probably can answer at least some of them. And even answering some of those questions would be useful. So that survey is still open. The deadline has been extended, and encourage everyone to take a look at it, and in fact, maybe we can even send out another link to the survey just so it's at the top of peoples of what I'm sure are busy email inboxes, but I would in your opinion to you look at that because it's important for ICANN to understand how countries are going to approach this issue

And also, if you are having trouble with answering any parts of the survey, please provide feedback on that, because I think that is useful information also for the designers of the survey to know. It could help them in designing perhaps more user-friendly surveys in the future, so that is useful information too.

Once we do receive information on the Operational Design Phase, that will be something that the GAC will be able to look at. That will inform the Board's consideration of the Phase 2a recommendations. So this will be a topic of interest to the GAC. I know we all look forward to seeing that.

We can already consider some other stakeholder groups' work on issues related to this topic. I would encourage people to look at SSAC's very short paper on 115, specifically in response to Phase 2a actually urges the community to really focus on building an effective system to access non-public domain name data. It's a very practical paper that I would encourage everyone to read, because it really makes what I think are very useful observations about what, in their view and I'm sure if many other stakeholder groups' views -- are the crucial issues, and that is coming one a system that is going to be effective, useful, user friendly, cost effective as well to get access to non-public domain name registration data. So I would commend everyone to look at that paper, which as usual, for SSAC papers, is short and to the point and straightforward but with keen insights.

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Finally, there are some follow-ups that the GAC could consider in the communique, particularly under the category of follow-ups to GAC advice. In our Montreal communique, we had specific advice to ICANN org to ensure that the current system, -- and this is the temporary specification we're talking about now -- includes reasonable access to non-public domain name registration data, that that is operating effectively. And one of the things the GAC recommended was educating key stakeholder groups, including governments, that there is a process to request this data. Because not everyone knows that. They may just do a WHOIS look up and see that a lot of information is no longer available and not know there is a way to get access to that information if certain criteria is met

So we had advice to provide some education that there is this process and make available links to registrar and registry information points of contact on this topic. And indeed, our contracted parties had some very useful guidance on what should be the minimum requirements for making requests for access to the domain name data. So this is a place where we are not aware of what steps that ICANN has actually taken in response to this advice. This is advice that the Board accepted so we would like more information on what actually has taken place in response to this advice

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As an aside, I will observe that if you are trying to find out how to make a request for access to non-public data, it is difficult to find that information on the ICANN website, and that perhaps is one place that could be considered for providing this education. And also we have given advice on asking for a timeline for Phase 1 implementation. Thus far, we have not received that timeline so that is another area for possible follow-up advice.

Next slide. I'm going to pass the baton now to my colleague Melina, who is one of the participants on the scoping team for accuracy of registration data. So the scoping team sets fort the rules of the road for whether and how a policy development process on accuracy would proceed. Melina, turn it over to you now.

MELINA STROUNGI: Many thanks, Laureen, and hi everyone. So just to quickly introduce myself, my name is Melina Stroungi, I am working on the Internet governance sector of the European Commission and participating as a member of the GAC. I have participated also in the EPDP Phase 2a and now in the accuracy scoping team now with Ryan Carl from the US. So basically some developments since ICANN 71. Basically just a few weeks ago we had our first meeting on accuracy on the fifth of October. Basically what we mean by accuracy, the need to collect and maintain accurate

registration data. We had three meetings so far, so it is a bit too soon to comment.

Just a note that contrary to the EPDP Phase 2a that Laureen talked about, this is not a policy development process. It is rather a scoping exercise, which means that it is there to explore whether policy development process will be needed. And the current target to complete the scoping work and basically the timeline to have a Final Report is set for the end of the August of 2022, I believe. This is just a small typo on the slide.

So basically the GNSO Council has tasked us with four assignments. The first to assess the accuracy obligations in place as specified in the registration agreement, and then assessment would include among others where there can be an agreed definition on accuracy. The second assignment would be to provide recommendations on how accuracy levels can be measured. And then the third assignment on the basis of the assessment under points 1 and 2, assignments 12 and 2, would be so assess whether the contractual data accuracy measurements effective as you see on the slide to ensure the registered name holders provide accurate and reliable contact information. And then on the basis of this, we would discuss as part of assignment 4 impact and improvements. Basically we would assess whether any changes recommended in order to improve accuracy levels. And if so, we would recommend so the GNSO Council how these

changes would be developed. For instance, if these changes should be done by a PDP, policy development process or by a contractual negotiation or in any other way.

So for us, all four tasks are important. We believe that correctly defining and determining the scope of what accuracy is really key. Accuracy interview is going beyond the GDPR, so the GDPR [indiscernible] data of natural persons and we want that the focus on the accuracy work is going beyond that to cover the accuracy of all registration data.

So as Laureen mentioned before, we're concerned about true accuracy. So about the actual substance of the word accuracy. So currently as it is defined and treated, it is limited to syntactical and operational accuracy. This means that for instance to ensure that an email address is spelled correctly, and an email can be successfully delivered to basically it would matter if I present myself as Laureen, as soon as my email is correct and whoever receives an email and does not receive back a failure receipt request, this is considered correct, which is problematic, because someone else could use my data presenting a false identity.

So we believe these are considerations among the many other considerations that we should take into account when determining whether we need to update the accuracy definitions which are in place since 2013, so a lot of years have passed, and

we think it's important given the opportunity to discuss whether updates are necessary and important to link the accuracy to the identity of the registrant. So any data should correspond to the actual registrant.

And as we said, all four assignments are important, and we really would want to ideally focus on all of them, have an equal chance to tackle each and then every one of them, and we hope that the scoping exercise can be as inclusive as possible and take community expertise into consideration. So we are welcoming everyone's input, we want to have as full participation as possible, and there are currently discussions also to try to find a flexible way of working in the scoping team, having a flexible system of alternates and hopefully finding ways to receive input from the wider community

Next slide, please. Great, I think I will go back to you, Laureen, and if you have any questions, I would be happy to take them, thanks

LAUREEN KAPIN: I think we will turn this back over to Manal to see if our GAC colleagues have questions.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Laureen and Melina. This is very helpful. Thanks for the thorough and informative presentation. I hope this brings everyone up to speed. I'm just looking to see if there are any questions or comments I see no requests for the floor and no hand up. I hope -- Anna please, go ahead. UK.

UNITED KINGDOM: Thank you so much, Manal.   This has been a very helpful presentation. Very pleased to see the accuracy scoping work, important work and the need to clear timelines going forward on [indiscernible] implementation. Just a brief point on the SSAC questionnaire. I totally agree with the points on the challenges of the questionnaire and the UK has recently submitted a response and we would be happy to discuss our responses to others -- just an example, and we may be experiencing other challenges. Thank you very much.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Anna. I see Russian Federation.

RUSSIAN FEDERATION: Dear colleagues, we discussed [indiscernible] for instance approximately how SSAC system will be organized, and step by step we are going close to more operational matter. First of all, I want to say thank you for [indiscernible] survey. Because the survey provides opportunities for governments and other parties

to share their vision of how practical details of this system can be organized.

And my question is related to a continuation of this matter. Before ICANN conferences, we may [indiscernible] our business community, registrars and other interested parties, and they show some concerns about practical details about how the SSAC system would work, for example support of languages, some sort of [indiscernible] confirmational requests, [indiscernible] requests, confirmations of transfer to relevant registrar, and so on, so forth, operational details like seeing the [indistinct]

And finally, my question, how do you plan to organize work with receiving these requests and discussion details, practical operational issues of your system, because we want to escape situation when we will discuss only basic keystone principles, and then the system will be put in operation, and then suddenly we understand that many details are not acceptable but may be comfortable or not, very good prepared for practical usage. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you very much. Any immediate reactions to Russia's comment?

LAUREEN KAPIN: I appreciate Russia's comment. And I think those are important questions. I think the policy recommendations are at a somewhat high level, and the concerns that you are raising are more practical operational concerns that I think will have to be grappled with during an implementation phase and in part will need grappled with as the system is actually used. I wish I had the capability to give the clear roadmap about these complicated topics. But I think in advance of the Operational Design Phase which I'm sure will shed some insights on some of these questions and also implementation work and actually experience, I think it's very hard to provide answers to that question. I am just providing insights on procedure wise and timewise when I think that they could be answered, and it would be in those future phases. I hope that's helpful.

MANAL ISMAIL, GAC CHAIR: Thank you very much. I see France next. Vincent, go ahead.

FRANCE: Thank you very much, Manal. Vincent Gouillart, for the record. And once again, I will speak in French.

France celebrates its formation of the scoping team that has to do with data accuracy. And we certainly hope it will go through the different steps towards the launch of a policy development process. It is unfortunate that the topic was not included in the

PDP at the very beginning, but still we are happy that it is present at this point.

I would like to thank Laureen and Melina for their follow up on that topic as efficiently as they always do I do have a question as far as the Operational Design Phase for the ODP, perhaps I missed something. Do you, Laureen and Melina have new information on the extent of the delay that this phase would lead to? That was my question. Thank you very much.

LAUREEN KAPIN: I personally don't have any new information. Manal, you can jump in and correct me if there is any more specific information about the timeline of when the Operational Design Phase for Phase 2 will conclude. But no specific information. The only thing I will observe is that until that gets concluded, that the Board will not consider the recommendations because that work will inform the Board's decision making.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Laureen. Indeed, I don't know the exact time frame. I know that part of the delay is being blamed on the survey as well, that we are extending the survey, but I'm sure it's not the only reason of course. But I understand there is a session on Thursday that may provide more information. Unfortunately, I think it coincides with our wrap up session, but I don't have the

schedule in front of me, but anyway, even if we're not able to attend, I'm sure we will be listening to the recording and getting further information. I see Russia's hand up. Please, go ahead.

RUSSIAN FEDERATION: A very short response to Laureen's answer. Thank you very much for your feedback, and I understand you haven't an answer right now, but please take into account these comments and consider how better to organize such work for discussion and preparation in advance, practical cooperational details, it's important. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Russia. I don't see any other hands, but I saw a comment in the chat earlier from Jorge, which I think would be good to conclude with, and he was asking a question on whether we need specific asks for the communique. So anything specific that we need to bear in mind for the communique that we will start drafting tomorrow?

LAUREEN KAPIN: So we are conferring on this and hoping to be able to introduce something on follow-up to prior GAC advice, since there are some threads of that advice that we are still uncertain about how and whether they have been picked up. And that is where we would propose to focus any communique language. And that is

speaking for the GAC small group.   Others of course may have other thoughts, and we welcome those thoughts.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Laureen.   Any other comments or questions or requests for the floor?

LAUREEN KAPIN: I just want to say one more thing, because I heard you make the comment that perhaps it was the GAC's response to the survey that would be holding up the Operational Design Phase. I have no idea what is holding up the Operational Design Phase, but I would observe, based on my experience with the Phase 2 recommendations, the accreditation of part of those recommendations is a very small part of that very long report and list of recommendations. That is just one of many. So I for one would be very surprised if that entire effort was being held up on for survey responses on this one very discrete issue. That is my humble opinion, just wanted to share that.

MANAL ISMAIL, GAC CHAIR: Thank you, Laureen, and indeed, as I understood, I'm sure that is not the only reason, and I believe the data collection phase is taking more than estimated but definitely we are not the only reason, that I can assure you.

So we will be looking forward to our discussion tomorrow on the communique language, if any, and in lack of any further requests for the floor, I would like to reiterate my thanks to you, Laureen and Melina, for again a very thorough and informative presentation, and I thank all members of the GAC, PSWG, and the small group on GDPR. I know this is a very demanding process, and I thank everyone for the time and effort they dedicated for this. And thank you all, GAC colleagues. This concludes our discussion on RDS/WHOIS and data protection and concluded our meetings for today. We will start tomorrow at 900 Seattle time, 1600 UTC for our bilateral with the Board, please be prompt

And the GAC leadership will provide its daily update at 1430 UTC for those who have missed any of today's session. Until we meet tomorrow, please stay safe and have a good rest of your day or night.

Thank you.

[END OF TRANSCRIPT]