ICANN78 – GAC Discussion on WHOIS and Data Protection Policy (incl. Accuracy)

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ICANN78 | AGM – GAC Discussion on WHOIS and Data Protection Policy (incl. Accuracy)
Tuesday, October 24, 2023 – 3:00 to 4:00 HAM

GULTEN TEPE OKSUZOGLU: Hello, and welcome to the ICANN78 GAC Discussion on WHOIS and Data Protection Policy (including Accuracy) Session being held on Tuesday, 24th of October at 1300 UTC. My name is Gulten Tepe Oksuzoglu, and I'm the remote participation manager for this session.

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ICANN78 – GAC Discussion on WHOIS and Data Protection Policy (incl. Accuracy)

EN

multistakeholder model, we ask that you sign in to Zoom sessions using your full name.

With that, I will hand the floor over to GAC chair, Nicolás Caballero. Nico.

NICOLÁS CABALLERO: Thank you very much, Gulten. Welcome, again. Welcome, everyone. Please take your seats. We're starting already to the session on WHOIS and Data Protection Policy.

I have the great pleasure of introducing my distinguished colleagues, Gabrielle Andrews from the U.S. Federal Bureau of Investigation, Laureen Kapin from the U.S. Federal Trade Commission, Kenneth Merrill from the U.S. Department of Commerce/NTIA, and Melina Stroungi from the European Commission, who's with us today online; and, of course, my distinguished vice-chair, Mr. Nigel Hickson from the United Kingdom.

So with that, welcome again, everyone. Let me give the floor to Melina Stroungi from the European Commission. Melina, over to you.

MELINA STROUNGI: Thank you, Nico. And hi, everyone. So we expect to start this briefing with a reminder of the recent developments in the WHOIS data protection landscape, and we will have an overview of the development process on these issues that you see on the slide.

So first, we will start with a background on WHOIS and data protection. Then I'll give you an update on the proposed gTLD Registration Data Policy. Then my colleagues will also give an update on urgent requests

ICANN78 – GAC Discussion on WHOIS and Data Protection Policy (incl. Accuracy)

EN

and the Registration Data Request Service. They're going to also cover the privacy/proxy services; data accuracy; and, last, considerations for Hamburg Communiqué. Next slide, please.

So since this will be a presentation on various developments in WHOIS, I want to start by explaining why WHOIS data, Domain Name Registration Data, are so important.

So the WHOIS system is also known as the phone book of the Internet. It gives you information on who is behind a domain name. This has a lot of legitimate uses and benefits.

For instance, it helps law enforcement authorities identify the bad guys on the Internet. It also helps identify victims. So especially when it's needed to quickly convert a domain name or an IP address to actually track to a person. WHOIS data also help cybersecurity professionals in any business or organization to combat fraud and abuse. It also helps intellectual property owners to protect against the misuse of their IP rights.

And overall, WHOIS has boosted the confidence of all people in the security and reliability of the Internet, especially because it helps them to know with whom they are interacting online. And the objectives of security and reliability of the Internet, of the Domain Name System, are also in line with ICANN Bylaws.

Now, as you already may know, certain things about the WHOIS system have changed in light of developments in privacy legislation, and especially with the entry into force of the European General Data

ICANN78 – GAC Discussion on WHOIS and Data Protection Policy (incl. Accuracy)

EN

Protection Regulation, GDPR, in 2018. So due to privacy concerns, a lot of data that were previously publicly available were redacted.

Now, the GDPR protects personal data of natural persons, but a lot of data redacted were data relating to legal persons. So WHOIS went black. So it's important now than ever, to the extent possible, to keep WHOIS quickly accessible for security and stability purposes and also to retain the WHOIS system as a useful tool for the public for legitimate purposes such as combating fraud or protecting ourselves against criminal activity. Next slide, please.

This timeline shows the path to a new Registration Data Policy which will be more compliant with data protection rules and which will hopefully give a final access system. So it's possible to access data that are not publicly available for legitimate and lawful purposes. Since May 2018 and since the adoption of the Temporary Specification, the ICANN community has worked in a lot of policy work areas that will be covered in this presentation.

So the green you see on the slide is the work that has been completed. So EPDP Phase 1, Phase 2, Phase 2A, and the SSAD Operational Design Phase, this is all policy development work. So the green is policy development that has been completed. Why the red bullets?

I'm sorry. Can you hear me?

GULTEN TEPE OKSUZOGLU: Yes. We can hear you, Melina.

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NICOLÁS CABALLERO:	Yes. Go ahead, please, Melina.

MELINA STROUNGI:	Great. All right. So green shows the policy development work that has been completed, and the red shows implementation of such projects. So you see Phase 1 Policy Implementation which leads to the Registration Data Consensus Policy on which I'm going to present. And then you also see Phase 2A Implementation and the SSAD Phase 2 Implementation which is surrounded by dotted lines, which means that the work there has not started yet.

And then what is in yellow is work that is neither policy nor development. It's just ongoing. So there is still scoping of a possible future work on accuracy and on the Registration Data Request Service, the RDRS Pilot, where my colleagues are going to present later on. Next slide, please.

So, Draft Registration Data Consensus Policy. As you may recall, this policy lays down requirements concerning the collection, transfer, and publication of gTLD registration data. It was drafted last year in implementation of the EPDP Phase 1 Recommendations. There was a public consultation, and a lot of groups, including the GAC, provided their comments.

We have voiced several public policy concerns. You see some examples on the slide. For instance, we expressed concerns vis-à-vis urgent requests.

So what are urgent requests? These are requests for access to data for lawful access to information in circumstances which involve imminent

78 | ANNUAL GENERAL MEETING

ICANN78 – GAC Discussion on WHOIS and Data Protection Policy (incl. Accuracy)

EN

threats to life, bodily injury, critical infrastructure, and child exploitation. And there, as GAC, we made two requests. We asked for a broader definition. So we asked that, also, serious cybersecurity incidents are included in the definition. And we also asked for a tight timeline, 24-hour timeline, to respond to such requests.

We also supported the collection and publication of the seller data, asking for more clarification of what entities should be covered. And we also supported the collection and publication of data relating to legal persons. This has been a very important issue for the GAC, and we have always maintained the position that data of legal persons should be public.

We also found, concerning a link between the publication of the data to the commercial feasibility. So for instance, there were a lot of occasions in the policy where you could read "data of legal persons should be redacted when it's not commercially feasible to publish them." So we wanted to clarify: what does "commercially feasible" mean? Next slide, please.

We also stressed the need for greater clarity, clearer standards for implementation and enforcement. And also, the risks of creating a partial system resulting in a gap policy.

It's important when designing any kind of policy to take into account other policies that are going in parallel. And, of course, also any legislation going in parallel. Otherwise, you end up having a policy which may be outdated.

ICANN78 – GAC Discussion on WHOIS and Data Protection Policy (incl. Accuracy)

EN

So ICANN took all of the comments received by all the groups, 14 submissions in total, and they came back with their response in their Report of Public Comments in January. And they dismissed some of our comments.

For instance, regarding the publication of reseller data and of legal persons' data, they said that they are outside the scope of EPDP Phase 1. Why? Because, if you recall, the issue of legal persons was also dealt in Phase 2A. Phase 2A recommendations made mandatory for registries and registrars to have the technical functionality in place to distinguish between registrations that are from legal persons and registrations that come from natural persons. So it is mandatory to have these technical fields in place, but it's optional to use them.

And we learned that these recommendations are now in queue for implementation. So we wanted to follow up with ICANN Organization: what is the timeline? ICANN Org replied that to implement the EPDP Phase 2A Recommendations, first it's dependent on the completion upon Phase 1. And depending on the timing, maybe Phase 2A Implementation will start in 2024, or, if we're lucky, in this quarter of 2023.

For us, it's very important that these policies are linked together because the obligation to have a technical field in place for legal persons is also very closely linked to the Data Registration Policy.

And with regards to the last point, the 24-hour response for urgent requests, the Board did not accept to—sorry the ICANN did not accept to expand the definition, but they agreed at first place with the 24-hour response time. They found that it accurately reflects a

ICANN78 – GAC Discussion on WHOIS and Data Protection Policy (incl. Accuracy)

EN

recommendation, which we found fair because if you keep the definition narrow to only life-threatening situations, then 24 hours seemed a good timeframe to match with this urgency.

However, this changed during the IRT. My colleague, Laureen, will explain to you better what happens. And there was a proposal to extend the 24 hours by three business days, two plus one. And so the GAC sent a letter on urgent requests where we said that we cannot accept such an extension because it's not in line with public safety. But, of course, we are not opposing the publication of the rest of the policy.

So for the moment, the application of the policy was [proposed], but ICANN announced that they will discuss the possibility to publish the registration policy without the urgent request section. And we are supportive of that because our intention was not to delay the publication of the policy, but to deal with the very important issue of urgent requests.

And now, my colleague Laureen. I will pass the floor to her to explain to you better because she was involved also in the IRT. Thank you.

LAUREEN KAPIN: Thank you, Melina. My name is Laureen Kapin, and I'm speaking in my capacity is one of the GAC representatives on the policy work that we're dealing with on Domain Name Registration Data issues and also in my capacity as one of the co-chairs of the Public Safety Working Group.

So let me first say this is a little confusing because we have all these different phases and all these concurrent streams of work. So I'm going

ICANN78 – GAC Discussion on WHOIS and Data Protection Policy (incl. Accuracy)

EN

to try and make sure that I'm dividing things and flagging what process points I'm talking about.

So for right now, I'm going to start with the implementation of the Phase 1 policies. That is where the recent GAC letter to the Board took place on the proposed recommendations to implement the policy for urgent requests.

And I am not going to delve into all the interim steps about whether it's 24 hours, 24 hours plus one day, 24 hours plus one business day, or two business days, or calendar days because the headline is that there was disagreement about what is appropriate to respond to an urgent request which, as we've already said, is very narrowly defined "an imminent threat to life, child endangerment, or an imminent threat to critical infrastructure."

So at the end of the day, after the IRT was unable to come to a position that the GAC could support in terms of what's an appropriate response to an emergency request for this Domain Name Registration Data, the GAC authored a letter to the Board setting forth the history and why it's so important to have a response time that matches an emergency request.

And we're very grateful to the Board that they acted on this letter expressing our concern by saying, "Okay, we're going to pause this publication," and then most recently saying, "As the GAC had requested, we're going to pause, specifically, this issue of urgent requests so that more consideration can be given to the timing and the procedures around it. But everything else in the Phase 1 Implementation, that can move forward."

ICANN78 – GAC Discussion on WHOIS and Data Protection Policy (incl. Accuracy)

EN

So that is where we are today. The Board had also asked for some examples of scenarios that would reflect the nature of an urgent request in one of the Board/GAC interaction calls, and the Public Safety Working Group is gathering examples. And we hope to have a specific discussion with the Board on that very topic, hopefully, next month.

I'm just looking quickly at this slide. Wait. Hold your horses. I just want to make sure I've covered the landscape here. Yes.

We already have a question. Great. Good thing I paused. Let's have a question.

NICOLÁS CABALLERO: Thank you so much, Laureen. I have Indonesia. I don't see him on the, oh, over there, over there. Go ahead, please.

ASHWIN SASTROSUBROTO: Thank you, Nico. Ashwin from Indonesia for the record. From the previous speaker, I would like to know about the WHOIS data protection because I just want to know whether the current system for data protection has already accommodated the German court decision during the case of ICANN vs. EPAG. That's all. Thank you.

NICOLÁS CABALLERO: Melina, would you like to take that one?

MELINA STROUNGI: Yes, thank you. Thank you for the question. So I'm not entirely sure exactly to which aspects of that judgment you refer to. Maybe you want

ICANN78 – GAC Discussion on WHOIS and Data Protection Policy (incl. Accuracy)

EN

to explain. But overall, the issue with data protection and WHOIS was the following.

In 2018, the General Data Protection Regulation entered into force. This is a European regulation, and it protects data of natural persons. And as a response to that, a lot of data that were publicly available in the WHOIS database were redacted, but without making a distinction what belonged to natural persons, which is covered by the GDPR, and what belongs to legal persons.

Right now in the policy, a lot of privacy concerns have been taken into account. However, this issue of distinction between legal and natural is still a very long-standing issue, I would say, which has not been properly resolved. And this is why we keep repeating that it's important to also publish data of legal persons in line with other policies such as 2A and legal developments.

But if you want to clarify a specific issue, I don't know, I'm happy to do it. I just didn't understand properly to which part you were referring to. Thanks.

ASHWIN SASTROSUBROTO: Okay, thank you. I'm asking this because in Indonesia, we have just launched a new regulation on data protection policy which uses GDPR as a reference. So I just want to know if it is already covered in the WHOIS policy data protection for the German court decision about the case of EPAG vs. ICANN has been accommodated in these new policies. It's important for us to review the WHOIS data policy through our new law on data protection. Thank you.

ICANN78 – GAC Discussion on WHOIS and Data Protection Policy (incl. Accuracy)

EN

NICOLÁS CABALLERO: Thank you, Indonesia. Thank you, Melina. Back to you, Laureen.

LAUREEN KAPIN: Thank you. Okay, now we can go to the next slide. Thank you. So it's not only the GAC that was concerned about this proposed timeline. The SSAC also was very concerned about the proposed timeline for urgent requests, and previewed with the GAC. This has been circulated, so I encourage folks to read it in its totality. But the SSAC has let us see a draft of its comment on this very issue. And if folks have feedback and flagging, they would love to hear from you by November 3rd.

But here's the headlines for this. The SSAC was struck by the incompatibility between the definition of urgent requests and the proposed timelines. And they noted that if there's going to be a threat to life, that the response time should be measured in minutes, not hours or days. They also expressed concerns with one of the latest iterations of the proposal here, which is "generally within 24 hours," and noted that if you're going to have a qualifier of "generally," that's not so clear and might not be enforceable.

So the other practical concern the SSAC raised was that there isn't a clear procedure that is specified for how you reach a registrar when you have an urgent request. They looked at some comparable analogous scenarios that are already in ICANN contracts. And in the 2013 agreements, there are obligations to have a 24/7 method to reach a registrar to take in reports from law enforcement about abuse.

ICANN78 – GAC Discussion on WHOIS and Data Protection Policy (incl. Accuracy)

EN

And they also provide some examples about what some Internet providers have just as their own policies for dealing with emergency requests. They also pointed out that if the Implementation Review Team is going to come to conclusions on this topic, the rationales should be specified.

They have three recommendations in the SSAC paper that they're proposing. They're advocating that there's going to be additional structure for how to handle these requests. So that loops back for: who do you contact at the specific registrar? It's a very practical, important consideration.

And their view that if it's an emergency, it should be responded to in no more than 24 hours, and that there also should be some data gathering on this topic. That Org should acquire and document data regarding urgent requests and push this information out to the community so that these issues can be considered.

So for your reading pleasure, I absolutely recommend the SSAC draft on this. Next slide, please.

Okay. So, now, timeout. We're switching topics. We're pushing away, a little bit our Phase 1 Implementation, and we're going to something that's actually related to Phase 2. And that is the registration Data Request Service. As you may recall, this is the pilot program that has been instituted to provide a way for folks to have a centralized portal to submit a request. And then under certain circumstances, that will go to the registrar for action.

ICANN78 – GAC Discussion on WHOIS and Data Protection Policy (incl. Accuracy)

EN

So how did we get to this pilot program? So as you may recall, Phase 2 developed a Standardized System for Access and Disclosure that was referred to as SSAD. That generated some concerns from the GAC, but it also generated some concerns from ICANN Org when they looked at assessing: what is this? How is it going to work? What's it going to cost? How feasible is it to do?

And the Operational Design Assessment concluded that this really complicated, and it's going to be really expensive. And is it worth it to do this if we don't know if it's really going to be used? So the GNSO Council then spoke with the Board, and the bottom line is that there came to be a decision that the SSAD recommendations have not been approved by the Board.

But what's going to happen in the meanwhile is that there's going to be this Registration Data Request Service. So when you hear people talking about RDRS or "redress," they're talking about this pilot program to determine usage and feasibility of a future system. Next slide, please.

So this is a good visual depiction, and it gives you a good highlight. For the next couple of slides, I'm probably not going to go over every word, in the interest of time, but these slides will be available to you so you can look at it more closely.

But here are some key features of the system. First of all, it's not going to last forever. It's only going to be two years. There's going to be regular reports on the usage, and that's going to inform folks about how viable this system is. And then after this two-year pilot concludes, there's going to be discussions about: what do we know now?

ICANN78 – GAC Discussion on WHOIS and Data Protection Policy (incl. Accuracy)

EN

So a reminder of the key features. It's supposed to be central. It's supposed to make things easy. It's not going to cost anything for folks who want the information.

There is not a system to say if it's a law enforcement request that, yes, we know you're actually law enforcement. There isn't a procedure to do that. That actually is something that's proposed in the Phase 2 policy recommendations, but this is a streamlined, simplified system.

Only registrars are going to be providing this information, not registries. And it's going to be done through a portal.

So it's important to recognize what's inside this system. It's just the request. Once the request comes in, if a registrar is participating—and that's voluntary—then it goes outside the system, the RDRS system, and it goes to that registrar. And the registrar gets to decide what is going to be done.

So the GAC recognized this is a good first step. And, hopefully, we'll be able to collect some useful data. Next slide.

So here are the current next steps. We want to make sure that if this is a pilot, that there's lots of passengers on the plane. Right? So we want to make sure that the registrars are going to be participating in a way that makes this a system that's worth using. So we want to make sure that everyone's encouraging registrars to participate, and we also want to make sure that it gathers enough data to then make meaningful decisions. Next slide, please.

This is a very detailed slide that I encourage you to look at your leisure. But basically, it flags what data is going to be collected in these usage

ICANN78 – GAC Discussion on WHOIS and Data Protection Policy (incl. Accuracy)

EN

reports. So you can see that it's everything from who's participating, numbers of requests, how long it takes, average disclosure response time, all things that will help people decide about how well this system is working and being used. Next slide, please.

So in terms of what will be a success here, the main takeaway is: has, then, this system sufficiently informed the community and the Council, in particular, and the Board to make a decision with regard to the SSAD. That takes us back to the Phase 2 recommendations, which this is a pilot related to.

And then we have this list of criteria that is going to be key for making these considerations. Is it available to everyone? That everything's going to be tracked. That you're going to have sufficient participation by the registrars. That there's going to be sufficient usage by the requesters. And also, there's going to be a way to measure that. So there'll be some user satisfaction surveys given. Next slide, please.

So I want to remind folks about, also, some risks here. So this is a pilot to measure usage. It's all voluntary, and this is key. It's voluntary by the registrars. It's voluntary for the requesters. So we don't know how many people are going to participate. But if not enough participate, then the data generated won't be that useful.

We want to make sure that there's good outreach and accurate outreach here because we don't want people to be confused. We don't want people to think that, "Well, if I use this, it's guaranteed to be able to go to the registrar where my information is." It may or may not. If that registrar isn't participating, it won't go to that registrar.

ICANN78 – GAC Discussion on WHOIS and Data Protection Policy (incl. Accuracy)

EN

We also don't want people to be confused that just because they make a request, they're going to get the information they requested. That's up to the registrar to make that assessment. So these are all some risk factors. And the GAC has acted on those risk factors in its communiqués, encouraging this education and outreach; that there should be training on how to use this system, including some FAQs, and to really encourage everyone to participate.

We encourage all the GAC representatives to encourage their requester communities and registrars in their jurisdiction as well. And the GAC has noted the importance of logging data here. Next slide, please.

Okay. So here are some latest updates. One of the issues that was flagged was the need for law enforcement to be able to make confidential requests. Because if you're law enforcement and you have an investigation, you may not want that investigation to become public or known. I'm happy to report that, actually, this was an issue that was resolved satisfactorily in the RDRS Group. And there's functionality for that. Next slide, please.

So you can click a box if you're law enforcement, and then you get this message to the registrar that basically says, "We think it's really important that this remain confidential. You shouldn't reveal this to the registrant. And if your policies require you to reveal it to the registrant, let the requester know so they can decide whether or not to go through with the request."

So this provides that communication link. So that's a very good outcome to this. And the GAC gave advice on this, and this is a good outcome. Next slide, please.

ICANN78 – GAC Discussion on WHOIS and Data Protection Policy (incl. Accuracy)

EN

Now, there has been a very recent change to the RDRS where the designation of the type of request, the priority of request, has been changed from "Urgent Request" to "Expedited Request." And there's a disclaimer here that essentially recognizes that we don't want people to be confused. And this is a change that came down from a member of the Board.

But the concern that was addressed here is we don't want people to be confused and think that if there is an emergency situation, that this voluntary system is going to give you a response, guaranteed, and in a short amount of time. That's not what this system is.

And there was concern that by having a priority level designated as an "Urgent Request," even if it is an urgent request, that might cause confusion and allow this reliance when you really can't rely on it because you don't know who's going to get your request, if they're participating in the system. There's no obligation in terms of timing. This is just a conveyance system.

So it was changed to an "Expedited Review Request," and then there's information basically saying, "Don't rely on this. If it's really an emergency, use the other means you may have possible, and try and contact the registrar directly." So that's the latest change to the priority levels in the RDRS system. Next slide.

So we're on to this third bullet point now in these updates—because we've covered the other two—registrar onboarding. So you, like me, may be wondering: if this is all voluntary, well, who's signed up so far? There's actually a live way you can look for updates on this, and that's

ICANN78 – GAC Discussion on WHOIS and Data Protection Policy (incl. Accuracy)

EN

the link on the slides. But so far, we have 19 registrars representing 10% of total domains.

And that may sound perhaps a little small, but what we have heard is that there's pledges by folks to have participation up to 45%. And then, of course, there could be more than those people who have pledged because I know we're all going to do our outreach and encouragement. Right?

And also, once the system is in place, there's a hope that even more people will jump on board because this is in everyone's best interest to us. So that's the update for now, but we hope that's going to continue to get better and better and better. Next slide, please.

Oh, is there a hand? I now see a little [inaudible].

NICOLÁS CABALLERO: Yes.

LAUREEN KAPIN: Perhaps Nigel has a question.

NICOLÁS CABALLERO: UK, go ahead, please.

NIGEL HICKSON: Yes. Thank you very much. And I appreciate there's an awful lot of information for us all to take in. Just two questions, and these might seem idiot questions and quite appropriate coming from me. But if I don't understand, I'm not saying that I have any special knowledge, but

ICANN78 – GAC Discussion on WHOIS and Data Protection Policy (incl. Accuracy)

EN

I've been around. And if I don't understand, then I guess some other people might not understand.

So the first question is that we all know there's contract amendments going through in terms of DNS abuse for registrars and registries. And we all hope those contract amendments will be agreed. So the first question is, when those contract amendments are agreed, will it affect the participation of registrars in this RDRS?

Because I think for some of us, it's very difficult to go back to our ministers and say we're implementing this new RDRS scheme which has some advantages in that, you know, the law enforcement authorities don't know the registrar. And they can just apply, and their request is routed. But if only a percentage of registrars is going to take place in this, if it's purely voluntary, then clearly there's an issue.

The second question is, in view of these latest developments, which I think many of us are trying to understand in terms of the urgent requests, will it be thus that if the urgent requests are implemented in the Phase 1 policy as you indicated—that now it will go back and, hopefully, there will be an agreement there—will, then, that urgent request agreement on 24 hours or whatever it is then be transferred into the RDRS? Or will it be implemented in some other way? Thank you.

LAUREEN KAPIN: I wish I had precise answers to your very good questions, Nigel. In terms of the first question, it did remind me that the Board has encouraged the GNSO to consider a PDP on making participation by registrars a

ICANN78 – GAC Discussion on WHOIS and Data Protection Policy (incl. Accuracy)

EN

requirement rather than just voluntary. And that may relate to some of the concerns that you raised in your first question.

Your second question, in terms of if the Phase 1 Implementation on urgent requests is resolved, will that then apply to the RDRS. I don't know the answer to that question, but I will observe that the RDRS is connected to Phase 2, not Phase 1.

But if Phase 1 is in effect and implemented in policy, then someone who goes straight to a registrar—and I'm not talking about the RDRS system, but goes straight to a registrar—my understanding is, then, the Phase 1 requirements would kick in, and those urgent request requirements would apply.

But as to whether it actually then would result in a change to the RDRS system requirements, I don't know the answer to that. Right now it is all voluntary. There are no timing restrictions that apply to this system.

NICOLÁS CABALLERO: Thank you, UK. Thank you, Laureen. I have Iran. Go ahead, please.

KAVOUSS ARASTEH: Thank you, Laureen. First of all, I admire your enthusiasm and your courage to follow this issue very permanently, and so on and so forth.

I'm sorry, I don't want to get into the linguistic problems. I don't believe that "expedited" is more stronger than "urgent." If you want to have something more than "urgent" [inaudible] "top urgent" or "'promptly." But I don't think that, in the view of as many other people, "expedited" is much more stronger than "urgent." That is a trivial issue.

ICANN78 – GAC Discussion on WHOIS and Data Protection Policy (incl. Accuracy)

EN

My question is the following. Something which is voluntary is not mandatory and cannot be reinforced. So this "voluntary" here and on many other areas, unfortunately, needs to be looked at again to see whether that corresponds to our request.

Something you have mentioned, that the 19 registrars have on board RDRS representing the 10%. That means the total gTLD domain is 190. Are you sure? Thank you.

LAUREEN KAPIN: I'm sure I may have messed up on the map at some point, but the 10% figure is correct. And hopefully, we'll get to a higher percentage.

As to the other observation, "expedited," I think the Board actually very much intended to have something that was less strong than "urgent" to flag that. They did not want folks to think that urgent requests would be appropriate for the RDRS precisely because there are no requirements, and it's voluntary, as you noted.

If we don't have more questions in the queue, I would go on to the next slide. Yeah?

NICOLÁS CABALLERO: We do.

LAUREEN KAPIN: We do? Sorry.

ICANN78 – GAC Discussion on WHOIS and Data Protection Policy (incl. Accuracy)

EN

NICOLÁS CABALLERO: Thank you, Laureen. Thank you, Iran. I have the Russian Federation, and then I have Brazil. Viacheslav, please go ahead.

VIACHESLAV EROKHIN: Laureen, thank you for your update and presentation. Thank you very much for efforts of the team because we understand that it's quite difficult to build the system in line with all requirements.

My question is related to anti-fraud in this test system. On the fraud, I mean, as I remember, we skipped accreditation for this system. And I mean the person who is not representative of law enforcement agency can mark a request as a lawful [intercept]. A person with an ordinary request can mark it as an urgent request for increasing priority of some requests.

I can predict that can be such fraud in system. What do you think how we can eliminate such fraud or illegal use of system? Thank you.

LAUREEN KAPIN: Thanks for the question. The Phase 2 requirements do have recommendations on accreditation precisely to avoid the problem of making sure that folks are who they say they are. So the hope is that after the data is collected for this system, that then we may decide whether we're going to move on with Phase 2. And then those recommendations which do include the verification could be considered.

There is also now this pause on urgent requests, and I think there will be discussions as part of Phase 1 Implementation about how we deal

ICANN78 – GAC Discussion on WHOIS and Data Protection Policy (incl. Accuracy)

EN

with these verification issues. For now, though, it would be up to the registrars to engage in the procedures that they follow today to figure out if the request that they're receiving is from the person who it purports to be.

NICOLÁS CABALLERO: Thank you, Laureen. Thank you, Russian Federation. I have Brazil.

UNIDENTIFIED MALE: [Same question].

NICOLÁS CABALLERO: Same question? Okay. Thank you. Back to you, Laureen.

LAUREEN KAPIN: Next slide, please. And we're all mindful of time, so our discussions will be getting quicker and quicker. But not too quick for the interpreters.

So last update. Registration data doesn't just include information about the registrants. Sometimes the information returned tells you, "Hey, this registration is protected by a privacy proxy service." And the RDRS as it's currently configured doesn't take into account how that issue is going to be handled.

And there's even a disclaimer that warns the requester, "Just so you know, you may not actually be getting the information you would like to get. You may get information that tells you it's protected."

ICANN78 – GAC Discussion on WHOIS and Data Protection Policy (incl. Accuracy)

EN

And by the way, that was an issue that was flagged by the Operational Design Team that said, "One thing that could affect usage is the risk that people don't get the information that they actually want."

And with that, I'm going to turn it over to my colleague, Gabe, who's going to talk more about these privacy proxy issues.

GABRIEL ANDREWS: Testing the microphone. Testing. There we are. Yes?

NICOLÁS CABALLERO: Sorry to interrupt you. There's a request for the floor from the European Commission. Pearse, go ahead, please.

PEARSE O'DONOHUE: Thank you very much. Pearse O'Donohue, European Commission. I think from the presentations that we've had from Melina and Laureen, it just shows the importance of maintaining our activity and pressure on what I see is a full production line with regards to policy and then implementation from the WHOIS data, to start with, to data accuracy to the actual access process.

And now we've just had a discussion about accreditation. And this is in order to ensure that there is a functioning system. I'm not particularly concerned about statistics now, but it is when, with all of this hard work that's been done, we are in a position to have a functioning system.

It will attract more, and it will also avoid a fragmentation and duplication of obligations and processes for everyone in that chain, and

ICANN78 – GAC Discussion on WHOIS and Data Protection Policy (incl. Accuracy)

EN

particularly for the service providers. And we do not want to create an extra burden for what is also already an important public policy obligation.

So with that said, if we saw the original timeline as shown by Melina, I really feel that we need to push forward. But I wanted to make the point, specifically with regard to this question of urgent requests. Because if we have so much work done with regard to the two phases, with regard to data accuracy—and now, of course, in relation to the data request process and, hopefully, also accreditation—if we have a beautifully functioning system with an awful lot of work invested in achieving that and we have a system that doesn't work in terms of time, then we have a failure.

And that is why, while I do recognize the language being used, and in the discussion we had just now with the Board that this work on urgency has been posed, we must, as GAC, be extremely vigilant that we don't have the launch of this process without a very strong and clear requirement with regard to timing obligations, and specifically for these urgent requests.

So I would stress and I would push GAC colleagues that we continue to militate for a very tight deadline for what is a very small percentage of overall requests. It's in relation to this risk to life and to serious cybersecurity attacks. And that is something which we must not lose sight of in this complex but carefully-engineered process. Thank you.

NICOLÁS CABALLERO: Thank you, Pearse, European Commission. Back to you, Gabriel.

ICANN78 – GAC Discussion on WHOIS and Data Protection Policy (incl. Accuracy)

EN

GABRIEL ANDREWS: Thank you, Pearse. And in addition to the excellent points you raised about policy regarding the WHOIS and accuracy and urgent requests, I have an additional piece of policy consideration that I really feel is important to flag here with regards to privacy and proxy services.

I was going to teach you the definitions between privacy and proxy. There were some in ICANN's old paper. In practice today, it doesn't matter so much. I see privacy services marketed that actually function as proxy services. I'm not confident that everyone here is really up-to-date about what that actually is, though, so I'd like to show you if you don't mind. Next slide.

If you were to go to lookup.icann.org ... Many of you have laptops, so you can do this now because it's fun to actually do WHOIS queries. You can look up cnn.com and get information back about who registered that domain. And I have some of that information in the blue box.

You can see that it was Turner Broadcasting, and this is a domain that was registered back in '93. This is what would have happened. They put in the information about themselves. That information goes to that data. Next slide, please.

I'm speaking too fast. If you were to register today a domain at leading registrars, you will see something different. There in the box is proxy information. That is what you could expect to see if you registered a domain today, no matter what you enter for yourself. This is because today, proxy services are more and more being offered by default.

ICANN78 – GAC Discussion on WHOIS and Data Protection Policy (incl. Accuracy)

EN

Where you as the registrant would have to opt out from them being turned on, they're being offered by default for free.

Now, as an end user, you might be happy about this. It's okay to not want your information to be public. There was an entire bit of GDPR about this very issue that we just spoke to. But because they are implementing a GDPR compliance mechanism called proxy services, this has a very important impact on our work with RDRS. And I want to speak to that now. Next slide.

We came into ICANN78 not knowing how registrars were going to treat requests that had proxy services associated with the domains. We have learned more about what it looks like is going to happen.

If a registrar has a domain that is associated with a proxy service, if you want to use RDRS to get registration data about who owns that domain/who operates that domain, they might take your request and say, "Yes, you are valid. We approve your request for this information," and return back, "Here's information about the proxy."

The RDRS system will be useful if it can provide information about the registrant behind the proxy service. There are challenges to understand whether it can be as useful in an environment where proxy is turned on by default if it does not achieve that purpose. That is the point I wish to make, and I feel it is a very important one. And it speaks then to the importance of where we are in our privacy and proxy policy discussions. If we go to the next slide.

Back in 2018 was the last time that we had advancement on privacy and proxy accreditation implementation. The policy was put on hold, 2018

ICANN78 – GAC Discussion on WHOIS and Data Protection Policy (incl. Accuracy)

EN

being when GDPR was being implemented. The update is, it's still on hold.

But this Wednesday, we are convening some of the original participants of those discussions on implementation of privacy and proxy, and we are going to start conversations again about where the thinking should go in light of the RDRS launch next month. And as I just illustrated, we can see why those discussions are going to be so very important to the utility of the RDRS system.

KENNETH MERRILL: Next slide. Great. Thanks, Gabe. I know we're pressed for time here so I'm going to skip over some of my planned remarks here. I'm not going to read the previous communiqué text that we provided on the topic of accuracy. It's available on the screen for you to read and follow up on.

I'll just say that among the EPDP Small Team, I think we're all in agreement that there's an achievable balance to be struck between the need for accuracy and protecting registrant privacy. And I think that's the key balance that, when we talk about the topic of accuracy, that we're all trying to address.

To find the right balance, we need meaningful data to answer some basic questions. For instance, how widespread a problem is inaccuracy of registration data? And perhaps more importantly, what do we mean by accuracy? It turns out that these questions aren't so easy to answer.

So in part, this was one of the goals of the Accuracy Scoping Team, which started back in July of 2021. And this included outlining the

ICANN78 – GAC Discussion on WHOIS and Data Protection Policy (incl. Accuracy)

EN

current contract requirements for registrars regarding accuracy of registration data and how those requirements are enforced by ICANN.

The Scoping Team then analyzed a number of approaches for measuring accuracy, which it presented in a report to the GNSO. These included three recommendations. Thank you for moving the slides forward.

First, that the GNSO Council request ICANN Org to carry out a registrar survey. Second, that further work proceed to explore the option of a registrar audit. And finally, that the GNSO Council pause the Scoping Team's work only on those proposals requiring access to registration data while ICANN worked to establish their legal basis for processing data and purposes for measuring accuracy.

In November of last year, the GNSO Council adopted a motion to pause the work of the Scoping Team and to defer consideration of Recommendations 1 and 2 until the data protection specification negotiations between the Contracted Parties and ICANN Org are completed and while ICANN worked on the work on the various scenarios for measuring accuracy.

This extension was extended again. I see we have one minute to go. It was deferred again for six months. And for those keeping track, we're now three months into the latest pause which, by my timing, will expire sometime around January.

But we do have news to share, which is that the ICANN Org work on those scenarios—they have come up with an assessment of the scenarios for measuring accuracy and shared this information in a

ICANN78 – GAC Discussion on WHOIS and Data Protection Policy (incl. Accuracy)

EN

report to the GNSO Council last week. And I believe we're going to be able to put a link—it's linked here in the slide, but we'll put a link in the chat as well.

Real quickly, at a high level, Org has assessed that until there's an agreed upon definition of accuracy, attempting to measure it proves difficult; and also that ICANN Org found that several of the proposed scenarios—the analysis of publicly available registration data, Scenario 1 here; a contractual compliance audit of registrar compliance with data validation and verification requirements, Scenario 2; and the voluntary registrar survey, Scenario 4—simply wouldn't yield meaningful data on the current state of accuracy.

They also found that the analysis of a representative sample of full registration data which would be provided by the registrars to ICANN would require additional contracts and/or policy provisions, and that it would also include considerable risk to the community, given the lack of legal basis under GDPR.

ICANN has provided some alternative options for continuing the work to look at the state of accuracy, and I would encourage you to follow the link in the chat, to read the report, to look at those options.

I know we're running out of time here, and we always hope to leave room for questions, so I think I'll stop there. I hope that touches on some of the substantive latest developments. Thank you.

NICOLÁS CABALLERO: Thank you very much, Ken. We did have some questions, but for the sake of time, I'm going to have to close the session right now.

ICANN78 – GAC Discussion on WHOIS and Data Protection Policy (incl. Accuracy)

EN

Thank you so very much, Ken, Gabriel, Laureen, and Melina. We're, as usual, over time.

Iran, I saw your hand up. Please send your questions via email.

We'll have a short break now. Well, not that short. 30-minute break. Make sure it's a coffee break [and not] some good German beer. And we'll reconvene here at 4:30. Thank you so much.

[END OF TRANSCRIPTION]