

**Attendance AC: 13 Members**

Amr Elsadr (NCSG)

Benedict Addis - SSAC

Beth Bacon (RySG)

Brian King (IPC)

Chris Lewis-Evans (GAC)

Hadia Elminiawi (ALAC)

James Bladel (RrSG)

Kurt Pritz

Marc Anderson (RySG)

Mark Svancarek (BC)

Milton Mueller (NCSG)

Rafik Dammak (GNSO Council Liaison)

Thomas Rickert (ISPCP)

**Guest:** Gina Bartlett - CBI

**Apologies:**

Kristina Rosette (RySG)

Alex Deacon (IPC)

Ashley, Heineman (GAC)

**View only Adobe Connect:** 13

**Staff:**

Marika Konings

Berry Cobb

Daniel Halloran

Terri Agnew

Terri Agnew: Welcome to the GNSO Temp Spec gTLD RD EPDP - Small team B on Thursday, 10 January 2019 at 14:00 UTC for 2.5 hours.

Terri Agnew: agenda wiki page: <https://community.icann.org/x/il4WBg>

Rafik Dammak: @Terri no audio with AC?

Terri Agnew: I was waiting until a little closer to meeting, all connected now.

Rafik Dammak: hi all

Rafik Dammak: waiting for other to join us

James Bladel: Here

Brian King (IPC): If I could jump in early, I think we might be able to finish Rec 16 quickly

James Bladel (RrSG): Brian is chomping at the bit today! :)

Brian King (IPC): nom nom

Milton Mueller: good morning Rafik Dynamic

Rafik Dammak (GNSO Council Liaison): @milton trust me that qualifying word doesn't work at 23:00

Thomas Rickert (ISPCP): Hi all, sorry for being late.

Milton Mueller (NCSG): Yay Brian

James Bladel (RrSG): No concerns here, thanks Brian

Chris Lewis-Evans (GAC): Consensus inside ten minutes! also no concern

Mark Svancarek (BC): I support Brian.

Beth Bacon (RySG): Sounds good. Thanks, Brian

Brian King (IPC): I think those comments are covered by our previous deliberations and the language in the initial report

Brian King (IPC): To be sure, could Marika point us to the specific comments?

Marika Konings: end of page two

James Bladel (RrSG): So...no nap?

Marika Konings: if you did your homework, no nap!

Brian King (IPC): We're prepared

James Bladel (RrSG):There's your answer, Marika.

Brian King (IPC):I will take a juice box though

Marika Konings:but we may finish quicker so you can have nap time at the end ;-)

Thomas Rickert (ISPCP):Has ICANN sent the memo they announced a while back?

Thomas Rickert (ISPCP):It would be good to see that during our analysis

James Bladel (RrSG):I think our comment is mostly aligned/comtable with Marc's

Marc Anderson (RySG):also, I just hung up (instead of pressing mute)... dialing back in

Marc Anderson (RySG):back in audio

Mark Svancarek (BC):BC can support any controller/processor arrangement that will enable ICANN to assume sufficient legal responsibility such that ICANN can compel contracted parties to respond to Whois queries from accredited requestors, most likely as part of a unified access model.

Mark Svancarek (BC):lost audio?

Rafik Dammak:sorry lost connection

Brian King (IPC):Perhaps we start by suggesting to replace "Joint Controller Agreement (JCA)" with "data processing agreement"

Brian King (IPC):+1 James

Beth Bacon (RySG):Brian- the RySG proposed some language in it's comments. would it be acceptable to you?

Beth Bacon (RySG):it removes JCA

Marika Konings:Beth, what does the RySG language replace JCA with?

James Bladel (RrSG):I should note that our support is conditional on ICANN assuming \*some\* formal responsibility here. We can't be compelled to disclose and also assume 100% of the risk exposure.

Berry Cobb 3:RySG proposed text "The EPDP Team recommends that ICANN Org negotiates and enters into required data protection agreements such as a Data Processing Agreement (GDPR Art. 28) or Joint Controller Agreement (Art. 26), as appropriate, with the Contracted Parties."

Hadia Elminiawi (ALAC):ALAC would support any type of agreements that would allow for an effective whois to exist

Beth Bacon (RySG):Marika this is the RY suggestion:

Beth Bacon (RySG):"The EPDP Team recommends that ICANN Org negotiates and enters into required data protection agreements such as a Data Processing Agreement (GDPR Art. 28) or Joint Controller Agreement (Art. 26), as appropriate, with the Contracted Parties.In addition to the legally required components of such agreement, the agreement shall specify the responsibilities of the respective parties for the processing activities as described therein. Indemnification clauses shall ensure that the risk for certain data processing is borne by either one or multiple parties that determine the purpose and means of the processing."

Beth Bacon (RySG):oh geez- Berry you're so quick!

Berry Cobb 3:@Beth - but I failed to get it all.

Marika Konings:Thanks, Beth, so it seems to align with what Brian suggested, right?

Beth Bacon (RySG):It just doesn't prescribe what contractual mechanism in teh Recc. yes.

Brian King (IPC):Thanks, Thomas. I hoped you'd let us know if that was a term of art.

Mark Svancarek (BC):Please note that BC comment is agnostic to specific use of "JCA", "DPA" etc

Brian King (IPC):Beth I find RySG language to capture either outcome, but I'm not a European lawyer and would love to hear how that language works in practice.

Thomas Rickert (ISPCP):We have, Benedict, albeit briefly.

Marika Konings:"such as" seems to allow for the flexibility needed?

Thomas Rickert (ISPCP):There could be standardized JCAs that could be disseminated together with the RRA potentially.

Marika Konings: Beth, can you confirm that the reference to data protection agreements should read 'data processing agreements'?

Beth Bacon (RySG): the first reference is data protection agreements is correct bc we then list the two specific examples.

Beth Bacon (RySG): thanks, Marika!

Marika Konings: ok, noted, thanks

Marc Anderson (RySG): the RySG language is generic using "...such as..."

Brian King (IPC): Marc, which I find attractive

Marc Anderson (RySG): to Brian's point, we wanted to flexibility for ICANN and contracted parties... for RySG the important thing is to get moving on negotiating those agreements.

Marika Konings: Do note that all small team findings will go back to the full EPDP Team to give people an opportunity to review and hopefully sign off on it.

James Bladel (RrSG): +1 Hadia

Mark Svancarek (BC): +1 James and Hadia

Marika Konings: but isn't part of the content determined by the EPDP Team recommendations? Presumably those cannot be overwritten by any type of agreement?

Marc Anderson (RySG): The flexibility is intended to be around the type of agreement that is put in place... not flexibility to change the policy recommendations of the working group

Mark Svancarek (BC): + 1 Marika and Marc

James Bladel (RrSG): Right

Hadia Elminiawi (ALAC): What really should matter here is the outcome of the agreements and its implications on the implementation of the WHOIS and I guess this is determined by all of our other work

Marika Konings: It may also be worth directing commentors to the open public comment period to make those points there as well?

Marika Konings: See [https://urldefense.proofpoint.com/v2/url?u=https-3A\\_www.icann.org\\_public-2Dcomments\\_irtp-2Dstatus-2D2018-2D11-2D14-2Den&d=DwIFaQ&c=FmY1u3PjP6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=DRa2dXAvSFpClgmkXhFzL7ar9Qfqa0AIgn-H4xR2EBk&m=B3Acr6KhOr3vsQ0BohOFOIUdYbDQVUMSIsfEhsV5ENU&s=FfHWkgzsR8iLPf8pzuugh5HyzLUWu8z-iWH58e-zcdM&e](https://urldefense.proofpoint.com/v2/url?u=https-3A_www.icann.org_public-2Dcomments_irtp-2Dstatus-2D2018-2D11-2D14-2Den&d=DwIFaQ&c=FmY1u3PjP6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=DRa2dXAvSFpClgmkXhFzL7ar9Qfqa0AIgn-H4xR2EBk&m=B3Acr6KhOr3vsQ0BohOFOIUdYbDQVUMSIsfEhsV5ENU&s=FfHWkgzsR8iLPf8pzuugh5HyzLUWu8z-iWH58e-zcdM&e) - although I noted it has actually just closed :-)

Marika Konings: Next steps following the close of the public comment period is: "Once public comments and survey input have been received, ICANN Org will update the Policy Status Report to include relevant information from these feedback mechanisms. The updated report will then be returned to the GNSO Council, who may then consider whether the report provides sufficient information as a standalone report for assessment of the policy, or if further review of the IRTP should be undertaken."

James Bladel (RrSG): I would say that things have broken, but we are coping.

Marika Konings: on a separate note, it would be really helpful if people provide specifics on the issues and provide those to the GNSO Council so it can factor these in as it determines the appropriate next steps on the review of the Transfer Policy.

Benedict Addis - SSAC: Well said James, thank you

Marika Konings: I am hoping that people already provided specifics in response to the public comment forum :-)

Hadia Elminiawi (ALAC): @Benedict and registrars could you compile a list of risks and/or failures that are facing the transfer policy so that the group could point them out

Marika Konings: reading some of the concerns, I did wonder whether it would need to be more specific that this is just a minimum - registrars / registries can and may be required to retain data longer as a result of local requirements?

Hadia Elminiawi (ALAC):The ALAC supports a longer retention period for the sake of ensuring the security of the users online

Marika Konings:I do believe there is a footnote somewhere, but it can be made clearer - whatever timeframe you settle on.

Mark Svancarek (BC):+1 Marc on minimum requirement; local law waivers also makes sense

Thomas Rickert (ISPCP):Legally, a minimum requirement is difficult as you need to demonstrate and defend the maximum duration and then DELETE.

Hadia Elminiawi (ALAC):@Marc then the recommendation should say that this is a minimum requirement example "for a minimum period of one year"

Hadia Elminiawi (ALAC):@Thomas so what do we do? if people dealing with incidents say that one year is not enough

Thomas Rickert (ISPCP):Define a specific duration, not a minimum requirement where parties can extend at will

Benedict Addis - SSAC:Thomas why?

Thomas Rickert (ISPCP):Storage limitation

Thomas Rickert (ISPCP):Also, remember this is just how long folks can keep data to fulfill an ICANN requirement.

Benedict Addis - SSAC:Storage not really an issue for text data!

James Bladel (RrSG):Yes, storage is cheap, but not when it grows exponentially.

Hadia Elminiawi (ALAC):according to Mark they are able to defend the three years data

Thomas Rickert (ISPCP):There may be altering retention periods based on national laws / retention requirements or based on the business practice, but that would not be for ICANN to govern

Hadia Elminiawi (ALAC):I meant data retention

Mark Svancarek (BC):Well put, Benedict

Marika Konings:@Benedict - the mobile ask doesn't want you to multitask - you can only look at Adobe Connect!

Marc Anderson (RySG):+1 to removing the "statute of limitations" language. That was part of the RySG comments.

Hadia Elminiawi (ALAC):ALAC also supports having the one year as a minimum

Benedict Addis - SSAC:Marika hehehe!

Mark Svancarek (BC):Well put Benedict (and also Chris from before, oops :)

Rafik Dammak (GNSO Council Liaison):@Bene I note you are back in the queue.

Benedict Addis - SSAC:Yep

Terri Agnew 2:still working on getting Amr rejoined

Terri Agnew 2:no luck getting Amr but still working on it

Marc Anderson (RySG):the 1 year on TDRP is particularly strong because it's to protect the data subjects rights.

Brian King (IPC):Thomas, I think we can justify the longer period based on the public comments, especially including the public comment from Europol

Terri Agnew 2:Amr is on audio

Marika Konings:Do note there is already a n ICANN conflicts procedure in place to address conflicts with local law as well as a specific data retention waiver process - as far as I understand, these would not be overwritten by this policy recommendation.

Benedict Addis - SSAC:Thank you Marika - but

Brian King (IPC):Thanks, Marika.

Benedict Addis - SSAC:... but this has never been used to EXTEND a contractual limit, only reduce it

Marika Konings:but if there is a requirement to have an extended retention period as a result due to local law, that would not be prevented by this policy recommendation as it concerns a minimum so no waiver is needed for that scenario, right?

James Bladel (RrSG):I don't think that's the concern, Benedict. The concern is that increasing regulatory burdens are contradicting each other.

Mark Svancarek (BC):I am too tired today - I had one further comment: regarding minimums being defensible, a CP 's retention policy would need to disclose that at the time of collection regardless whether mandated by ICANN policy, local law, or individual business needs.

Benedict Addis - SSAC:Typed this on my phone: "The ePDP Team recommends that Registrars are required to retain the herein-specified data elements for one year following the life of the registration. This minimum retention period is consistent the requirements of the TDRP"

Thomas Rickert (ISPCP):Thanks, Marc, for your kind comment!

Marc Anderson (RySG)::)

Benedict Addis - SSAC:Or with a freeze / extension option: "The ePDP Team recommends that Registrars are required to retain the herein-specified data elements for one year following the life of the registration. This retention period confirms to the requirements of the TDRP. Contracted parties may retain data for a longer period if required."

Hadia Elminiawi (ALAC):@Benedict That looks good to me

Mark Svancarek (BC):@Amr: There is a public comment asking for \*6\* years, So a discussion of two or three years, in that context, is in today's scope.

Mark Svancarek (BC):I took my hand down and made my comment into the chat

Marika Konings:This is what I noted: Proposed modification: make clear that proposed period is a minimum period, or more specifically a period for ICANN required retention and that CPs can adjust as needed beyond that period in line with local law / requirements. Remove the 'statute of limitations' language. Further discussion needed on the recommended ICANN retention period.

Chris Lewis-Evans (GAC):Mark Amr wont see your comment

Hadia Elminiawi (ALAC):@Amr the comments are discussing the retention period and that is why we are addressing this issue – we are discussing the concerns in the public comments how are you saying that we are off point and discussing new things!!

Mark Svancarek (BC):True - Rafik, can you share my comment on the call to Amr?

Rafik Dammak (GNSO Council Liaison):@Mark yes sure

Mark Svancarek (BC):thx

Hadia Elminiawi (ALAC):@Rafik please read my comment to

Hadia Elminiawi (ALAC):Thank you amr

Mark Svancarek (BC):AFAIK, that 6 year request was not discussed in plenary. (No need to read aloud...)

Hadia Elminiawi (ALAC):Lets discuss benedicts draft

Brian King (IPC):+1 Mark

Brian King (IPC):For Rec 21, I think this fairly noncontroversial

Brian King (IPC):Sorry Rafik, I'm here now :-)

Brian King (IPC):Let's double-check the PCRT

Brian King (IPC):I think the NCSG point is mooted by the words "with the non-contracted Party entities" in the Recommendation

Brian King (IPC):Here's where I could use the 5-minute period to review. This one is a biggun

Marc Anderson (RySG):+1 Brian

Terri Agnew 2:5 minutes to review (there will be silence)

Rafik Dammak (GNSO Council Liaison):one minute

Brian King (IPC):I think that concept makes sense, James. And may be required by GDPR anyway.

James Bladel (RrSG):Proposal: Handle contractual compliance monitoring requests, audits, and complaints submitted by Registry Operators, Registrars, Registered Name Holders, and other Internet users, consistent with the terms of the registry agreement and the registrar accreditation agreements, and any applicable data processing agreements, by accessing specific data only as necessary.

Brian King (IPC):Would love to review some language

James Bladel (RrSG):+1 Brian. More specificity is better.

Chris Lewis-Evans (GAC):@ Marc so also suggesting different legal basis?

Marc Anderson (RySG):hmmm, not sure off the top of my head Chris

Rafik Dammak (GNSO Council Liaison):@Marc you have any additional edits to James's proposal?

Brian King (IPC):In James' language, perhaps "processing" as opposed to "accessing" would be better. I like the concept.

Marc Anderson (RySG):I think James' language is an improvement. I think the RySG would still like to see that separated out into two parts.

Mark Svancarek (BC):I don't oppose 2-part language or change to "processing"

Brian King (IPC):I don't see any harm in the breakout the registries suggest

Benedict Addis - SSAC:I think the appendage "by accessing specific data only as necessary." is imprecise and detracts from a purpose that was previously intelligible to a lay reader.

Benedict Addis - SSAC:So prefer the registry breakout.

Benedict Addis - SSAC:RySG is correct that there's absolutely no need for an enumerated list that includes "Internet users" = basically everyone!

Marc Anderson (RySG):+1 to what Brian is saying now... I'm trying to do that right now

Marika Konings:James, Marc - any chance you can collaborate on bringing your two proposals together?

Marika Konings:ah, thanks Marc :-)

Rafik Dammak (GNSO Council Liaison):and quickly, it would perfect :)

Marc Anderson (RySG):Handle contractual compliance monitoring requests and audit activities consistent with the terms of the registry agreement and the registrar accreditation agreements and any applicable data processing agreements, by accessing specific data only as necessary. Handle compliance complaints initiated by ICANN, registry operators, registrars, registered name holders, and other internet users consistent with the terms of the registry agreement and the registrar accreditation agreements.

Brian King (IPC):"new purpose" scares me logistically - can we call it the same Purpose (compliance purpose for processing data)

Marc Anderson (RySG):trying again

Marc Anderson (RySG):1) Handle contractual compliance monitoring requests and audit activities consistent with the terms of the registry agreement and the registrar accreditation agreements and any applicable data processing agreements, by accessing specific data only as necessary.

Marc Anderson (RySG):2) Handle compliance complaints initiated by ICANN, registry operators, registrars, registered name holders, and other internet users consistent with the terms of the registry agreement and the registrar accreditation agreements.

James Bladel (RrSG):I don't think we (RrSG) care if it's in one part or two. Admittedly it is a clumsy read as a single recommendation. Our chief concern is that this is sufficiently constrained

Brian King (IPC):I suppose we could live with "third parties" in lieu of "other internet users"

Brian King (IPC):Wouldn't oppose

Benedict Addis - SSAC:For 2) I suggest: "Handle compliance complaints initiated by ICANN or third parties"

Marika Konings:This is what I have: 1) Handle contractual compliance monitoring requests and audit activities consistent with the terms of the registry agreement and the registrar accreditation agreements

and any applicable data processing agreements, by accessing specific data only as 2) Handle compliance complaints initiated by ICANN, or third parties consistent with the terms of the registry agreement and the registrar accreditation agreements.

Marika Konings: previously it was suggested to change 'accessing' to 'processing' - is that still so?

Brian King (IPC): I think processing is more accurate

Hadia Elminiawi (ALAC): ALAC has no objection with having two statements

Mark Svancarek (BC): can't hear Amr

Brian King (IPC): Processing > accessing

Marika Konings: any concerns about changing 'accessing' to 'processing at the end of 1)?

Mark Svancarek (BC): No concern from me for changing "accessing" to "processing"

James Bladel (RrSG): @Benedict - Coming from someone who regularly interacts with ICANN Compliance, we need these limitations.

Hadia Elminiawi (ALAC): I agree "consistent with the terms of the registry agreement and the registrar accreditation agreements" we don't need this

Brian King (IPC): +1 James. Looks like Marc gets to explain as he's next in the queue.

Hadia Elminiawi (ALAC): the agreements govern all the work and not just this purpose

Thomas Rickert (ISPCP): Why then not make the link to the record or processing activities - that will explain exactly what data is needed for what compliance action

Benedict Addis - SSAC: @Marc I support the separation, that is reasonable and logical.

Benedict Addis - SSAC: But we should resist the temptation to add verbiage, which protects no-one.

Benedict Addis - SSAC: Support Thomas's suggestion as a compromise.

Benedict Addis - SSAC: @James I understand. Can you find a phrasing which encapsulates your position without listing individual contracts?

James Bladel (RrSG): we could say "applicable agreements" or "relevant contracts and processing agreements"? Something like that may be a good starting point for our next (F2F) chat.

Brian King (IPC): +1 James

Benedict Addis - SSAC: Sounds reasonable. Till the next time!

Brian King (IPC): Good work team

Brian King (IPC): Motion to rename this team "Team 1"

James Bladel (RrSG): Need to catch a plane. See you all "Up Nort!"

Marc Anderson (RySG): I second Brian's motion

Brian King (IPC): Wise that this team didn't tacke Rec 10

Thomas Rickert (ISPCP): Haha - great idea, Brian!

Benedict Addis - SSAC: Counter-proposal: Team  $\alpha$

Mark Svancarek (BC): lol

Marika Konings: I think you covered it all :-)

Marc Anderson (RySG): Good job chairing Rafik, thank you!

Benedict Addis - SSAC: Hear hear

Mark Svancarek (BC): Thanks, Rafik

Brian King (IPC): +1 thanks Rafik

Thomas Rickert (ISPCP): Thanks, Rafik. Well done!

Hadia Elminiawi (ALAC): thank you all - bye for today