

**Adobe Connect: 8**

Amr Elsadr (NCSG)  
Hadia Elminiawi (ALAC)  
Kristina Rosette (RySG)  
Kurt Pritz

Leon Sanchez (ICANN Board Liaison)  
Margie Milam (BC)  
Rafik Dammak (GNSO Council Liaison)  
Thomas Rickert (ISPCP)

**On audio only:** none

**Apologies:**

Tatiana Tropina (NCSG)  
Emily Taylor (RrSG)

**Staff:**

Marika Konings  
Caitlin Tubergen  
Daniel Halloran

Berry Cobb  
Terri Agnew

Terri Agnew: Welcome to the EPDP Small meeting on Legal Committee Framework will take place on Wednesday, 23 January 2019 at 14:00 UTC for 2 hours.

Terri Agnew: Agenda wiki page: <https://community.icann.org/x/F5YWBg>

Kristina Rosette (RySG): Good morning. I have to drop at the end of the hour because hour 2 overlaps with hour 1 of the RYSG meeting, which I need to attend.

Amr Elsadr (NCSG): Hi all. Hope you don't mind me crashing this party today.

Terri Agnew: Thanks for the heads up Kristina

Amr Elsadr (NCSG): It might be helpful if Ruth could provide links to the guidance she referred to in her email.

Amr Elsadr (NCSG): I would like to propose an additional question, please.

Leon Sanchez: Hello everyone. My apologies for lateness

Thomas Rickert (ISPCP): I would really appreciate a bit of time to read the memo carefully.

Amr Elsadr (NCSG): @Thomas: +1

Marika Konings: also note that the legal committee mailing list is publicly archived

Thomas Rickert (ISPCP): May I suggest that everything that is being exchanged in this subgroup is made available to the entire group? We can mark things not final as "draft", but I would really appreciate if we could be fully transparent about our discussion.

Thomas Rickert (ISPCP): Thanks for clarifying, Marika!

Amr Elsadr (NCSG): Again @Thomas: +1

Margie Milam (BC): that works for me

Marika Konings: Also, recordings are posted on the wiki: <https://community.icann.org/x/4IMWBg> (and also on the GNSO calendar)

Margie Milam (BC): given that Kristina has shared the memo with her team -- are we allowed to do so with our teams?

Kurt Pritz: Is there a lawful basis for publishing a subset of the data submitted by the registered name holder that includes the city name. That data set would be: (and then list the elements as Margie said):

Marika Konings: @Margie - it is publicly archived (see <https://mm.icann.org/pipermail/gnso-epdp-legal/2019-January/000029.html>)

Margie Milam (BC):thanks

Leon Sanchez (ICANN Board Liaison):Might we say that the data field for City can be considered as PII and its publication could result in unconsented "discovery" of personal data and thus should be redacted?

Marika Konings:but the group may want to consider how to transmit it to the full team - should the group aim to draw conclusions from the memo in combination with what changes, if any, need to be made to the report?

Kristina Rosette (RySG):Wilson Sonsini was counsel to RDDS, I think.

Daniel Halloran (ICANN Org Liaison -Legal):FYI -- Here is the ICANN Org response to the question why city field is redacted in the Temporary Specification: Regarding the EPDP Team's question about why the City field is redacted in the Temp Spec, the Cookbook provides the following rationale: "The registrant's state/province and country will be published, but the address fields that could be used to more specifically identify the registrant would not be included in the public WHOIS (e.g. street, city, postal code). This would enable non-accredited users to determine the registrant's general location and likely jurisdiction but would generally not enable identification of the registrant". The link to the Cookbook: [https://urldefense.proofpoint.com/v2/url?u=https-3A\\_www.icann.org\\_en\\_system\\_files\\_files\\_gdpr-2Dcompliance-2Dinterim-2Dmodel-2D08mar18-2Den.pdf&d=DwIFaQ&c=FmY1u3PJp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=DRa2dXAvSFpClgmkXhFzL7ar9Qfqa0Algn-H4xR2EBk&m=KW9xr1TFanVSGF02gV0WVNzffpChl5feA\\_z-zrZn9nA&s=Bf7QkaQpv-7kOabTZ0\\_PhBmh6yXvkm13lubgrulaHzk&e=\[icann.org\]](https://urldefense.proofpoint.com/v2/url?u=https-3A_www.icann.org_en_system_files_files_gdpr-2Dcompliance-2Dinterim-2Dmodel-2D08mar18-2Den.pdf&d=DwIFaQ&c=FmY1u3PJp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=DRa2dXAvSFpClgmkXhFzL7ar9Qfqa0Algn-H4xR2EBk&m=KW9xr1TFanVSGF02gV0WVNzffpChl5feA_z-zrZn9nA&s=Bf7QkaQpv-7kOabTZ0_PhBmh6yXvkm13lubgrulaHzk&e=[icann.org]). The above quote is on page 26.

Margie Milam (BC):can we post the links to the memos Amr mentioned?

Margie Milam (BC):Yes -- makes sense to put it in the chat-- hard to track

Amr Elsadr (NCSG):@Margie: Both the WSGR memo and the input by the EU Data Protection Experts can be found on this page:

<https://community.icann.org/display/gTLDRDS/Responses+to+RDS+PDP+WG+Questions+on+Data+Protection+and+Privacy+Laws>

Margie Milam (BC):thank you!

Kristina Rosette (RySG):If you're talking Kurt, you're on mute.

Kristina Rosette (RySG):The only other comment I have about question 1 is that we should, for Ruth's convenience, identify the fields that are redacted under the Temp Spec.

Kristina Rosette (RySG):B&B has published a GDPR guide on its website that partially addresses this issue. Probaly makes sense to reference that guide in the question.

Amr Elsadr (NCSG):The additional question I'd like to propose asking is on the EDPB Guidance on territorial scope of GDPR, particularly the issue of ICANN having stable establishments within the EU, and how this impacts its responsibilities as a data controller. To me, the EDPB guidance suggests that ICANN, as a controller with stable establishments within the EU, might be required to comply with GDPR. My understanding is that this might be applicable even if processing activities (including registrar/reseller collection of data from RNH) take place outside of the EU. This might be helpful to the EPDP Team in determining whether or not the differentiation of practices for RNH based on their geo location is legally feasible, or not.

Kurt Pritz:Are there requirements for the data collector to validate or verify the data in some manner?

Kurt Pritz:Must the data collector ensure in some way that the data is not inaccurate or misleading?

Kristina Rosette (RySG):For purposes of going forward with the questions, would it NOT work for anyone if we put them into a Google doc and used "suggestion" mode to allow folks to suggest changes and provide comments?

Kristina Rosette (RySG):Thanks, Kurt.

Margie Milam (BC):Is there proactive obligations under GDPR to take reasonable steps to delete or correct inaccurate data received from the data subject

Margie Milam (BC):if yes, to what extent?

Thomas Rickert (ISPCP):We understand that the obligation to accurately record data as provided by the registrar is covered by Art. 5 I d GDPR. Are there additional requirements for the registrar to validate the accuracy of data elements, i.e. whether the data provided by the data subject is free of errors.

Kurt Pritz:What scenarios would lead to registrars being in violation of the agreement?

Thomas Rickert (ISPCP):My last comment is proposed language. Let's say what we all agree on and then ask about the controversial part.

Kurt Pritz:What scenarios (with regard to publishing data that is not accurate) would lead to registrars being in violation of the agreement?

Kristina Rosette (RySG):In the interest of completeness, I think we'd want to add "or registry operators" to those questions.

Margie Milam (BC):yes-- to Kristina

Amr Elsadr (NCSG):51d: Personal data shall be accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay ('accuracy')

Thomas Rickert (ISPCP):Hadia, building in error margins makes the question impossible to respond to, imho.

Amr Elsadr (NCSG):Accurate vs free of errors seems to me to be a distinction that makes no difference.

Kristina Rosette (RySG):I think Amr's proposed question is useful and support our adding it to the Google doc for further review and comment.

Amr Elsadr (NCSG):@Leon: +1

Margie Milam (BC):I don't agree with Leon's proposal -- that is the purpose of the question

Amr Elsadr (NCSG):If I'm not mistaken, Leon's interpretation is one of two conflicting interpretations to which we're attempting to get guidance from Ruth on.

Leon Sanchez (ICANN Board Liaison):Exactly Amr

Amr Elsadr (NCSG):@Margie: Yes. I think you're right.

Amr Elsadr (NCSG):Personally, my interpretation is the same as Leon's. :-)

Margie Milam (BC):it may be -- I just want Ruth's opinion on whether that is the answer

Amr Elsadr (NCSG):Sounds good, Margie.

Kristina Rosette (RySG):OK, thanks.

Kristina Rosette (RySG):Perhaps an issue for another meeting.

Hadia Elminiawi (ALAC):@Amr and Thomas if we relate the accuracy to the purpose it could be validated – example: if the registrar cannot actually contact me through the contact information that I have provided then this data that I provided is inaccurate for the purpose for which it was collected

Kristina Rosette (RySG):Totally fine.

Kristina Rosette (RySG):Yes, please.

Amr Elsadr (NCSG):Is there time to defer issues to future meetings?

Leon Sanchez (ICANN Board Liaison):the question to Ruth should be whether the obligation for data accuracy lies on the controller in order to embark in further efforts for verification of data provided by the data subject or if the obligation of data accuracy limits to having the data controller update the corresponding data base subject and in line with the data provided by the data subject, meaning the data controller should honor all requests by data subject to update his/her data in a certain data base

Amr Elsadr (NCSG):Here it is again: The additional question I'd like to propose asking is on the EDPB Guidance on territorial scope of GDPR, particularly the issue of ICANN having stable establishments within the EU, and how this impacts its responsibilities as a data controller. To me, the EDPB guidance suggests that ICANN, as a controller with stable establishments within the EU, might be required to comply with GDPR. My understanding is that this might be applicable even if processing activities (including registrar/reseller collection of data from RNH) take place outside of the EU. This might be

helpful to the EPDP Team in determining whether or not the differentiation of practices for RNH based on their geo location is legally feasible, or not.

Amr Elsadr (NCSG):Green is the color of \$\$

Leon Sanchez (ICANN Board Liaison):also the color of slime :P

Amr Elsadr (NCSG):The additional question I'd like to propose asking is on the EDPB Guidance on territorial scope of GDPR, particularly the issue of ICANN having stable establishments within the EU, and how this impacts its responsibilities as a data controller. To me, the EDPB guidance suggests that ICANN, as a controller with stable establishments within the EU, might be required to comply with GDPR. My understanding is that this might be applicable even if processing activities (including registrar/reseller collection of data from RNH) take place outside of the EU. This might be helpful to the EPDP Team in determining whether or not the differentiation of practices for RNH based on their geo location is legally feasible, or not.

Margie Milam (BC):I think to answer Amr's question -- we would need to describe ICANN's activities that take place in the EU

Amr Elsadr (NCSG):Agree, Margie.

Amr Elsadr (NCSG):ICANN's activities within the EU need to be mapped out against what constitutes a "stable establishment". This would be necessary to answer the question, as Margie suggests.

Kristina Rosette (RySG):+1 Margie.

Hadia Elminiawi (ALAC):+1 margie

Hadia Elminiawi (ALAC):Do we know what is the definition of stable establishment in the EU and whether this applies to ICANN or not

Amr Elsadr (NCSG):@Hadia: It's in the EDPB guidance.

Amr Elsadr (NCSG):With examples.

Kristina Rosette (RySG):As I understand it, the answer to Amr's question could potentially render the geographic differentiation issue moot.

Hadia Elminiawi (ALAC):@margie according to Amr yes it will affect our policy

Margie Milam (BC):yes-- can we ask the second question as well?

Margie Milam (BC):ok -- then we should ask the question

Amr Elsadr (NCSG):Thanks, Margie.

Hadia Elminiawi (ALAC):@Amr I am asking if ICANN is considered to have a permanent establishment within the EU

Amr Elsadr (NCSG):@Hadia: I believe it does, but I'm not an expert. Which is why I believe we need to ask Ruth.

Kristina Rosette (RySG):Thanks, all. I have to drop. Look forward to receiving the Google doc.

Hadia Elminiawi (ALAC):@Kurt Yes

Margie Milam (BC):yes

Margie Milam (BC):thanks all

Amr Elsadr (NCSG):@Hadia: Rereading your question, the term is "stable" establishment, not "permanent" one.

Amr Elsadr (NCSG):Got it, Kurt. Thanks.

Hadia Elminiawi (ALAC):@Amr your question depends on the legal definition of "stable establishment" and the legal situation of ICANN within the EU

Amr Elsadr (NCSG):@Kurt: Sounds good. Thanks.

Rafik Dammak (GNSO Council Liaison):thanks all

Amr Elsadr (NCSG):Thanks all. Bye.

Hadia Elminiawi (ALAC):bye