

EPDP Phase 2
Final Report
ALAC Statement

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ALAC – 28 July 2020

Overview

- EPDP Phase 2
- How we got here
 - Background on the underlying issues
- EPDP dynamics
- Possible solutions
- Where we ended up
- Going forward

Phase 2 Overview

- Design a System for Standardized Access to Non-Public Registration Data
 - Unified Access Model (ICANN Org term)
- Address Carry-over items from Phase 1
 - Display of information of affiliated vs. accredited privacy / proxy providers
 - Legal vs. natural persons
 - City field redaction
 - Data retention
 - Potential Purpose for ICANN's Office of the Chief Technology Officer
 - Feasibility of unique contacts to have a uniform anonymized email address
 - Accuracy and WHOIS Accuracy Reporting System

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WHY??

- Potential for large fines (4% of gross revenue)
 - GoDaddy 2017
 - Revenue: \$2.2B, Earnings: 150M = 6.8%
- Result: Risk Adverse

Key Issues

- Data controller: ‘controller’ means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data
- The right to the protection of personal data is not an absolute right; it must be considered in relation to its function in society and be balanced against other fundamental rights, in accordance with the principle of proportionality.

Players

- Contracted Parties: Registrars and Registries
- NCSG
- SSAC, ALAC, GAC
- BC, IPC
- ISPC

Unified Access Model (UAM)

- ICANN Org concept
 - Request for data goes to UAM
 - UAM requests data from contracted part
 - UAM decides whether release is reasonable
 - UAM releases or data requested or rejects request

UAM Problems

- ICANN does not have the data
- Contracted parties did not want to send the data to ICANN
- Potential problems with cross-border data flow
- Never really considered by the EPDP

CP Position

- They are THE (or perhaps Joint) Controller
- They are liable if data released improperly
- Only they can make the decision
 - Admittance of existence of “bad actors”, but...
- Largely aligned with NCSG

SSAD Options

- SSAD makes all the decisions
 - But no data on which to make them
- CP make all the decisions
 - They have the data, but timing uncertain
 - Not acceptable to many (ALAC, GAC, SSAC, BC, IPC)
- Hybrid Model
 - SSAD allowed to make decisions IF risk-free for CP

SSAD Decision Making

- AUTOMATION
 - But GDPR does not allow automation in some cases.
 - At the very end: Automation could be human assisted.
- Criteria
 - technically and commercially feasible and legally permissible

SSAD Automated Decisions

- Requests from Law Enforcement in local or otherwise applicable jurisdictions with either 1) a confirmed GDPR 6(1)e lawful basis or 2) processing is to be carried out under an Article 2 exemption;
- Investigation of data protection infringement allegedly affecting a registrant by a data protection authority;
- Request for city field only, to evaluate whether to pursue a claim or for statistical purposes;
- No personal data on registration record that has been previously disclosed by the Contracted Party.

Issues Related to Evolution

- Guidance from European Data Protection Board (EDPB) may be forthcoming.
- Case law may help.
- Joint Controller Agreements between ICANN and CP may allocate responsibility and perhaps imply liability.
- Legislation may change

Evolution

BUT...

- The SSAD could “evolve” ...

Evolution

BUT...

- The SSAD could “evolve” ...

Mechanism to Evolve

- Must be GNSO-based
- New decision may be “policy” even if criteria satisfied

Bottom Line

- The issues that are causing us problems **COULD** be addressed by the GNSO Council
 - We are giving them the opportunity

ALAC Statement

- Phase 1 Issues **MUST** be addressed in a timely manner.
- SSAD **MUST** be able to increase automated use cases that meet the recommended policy **WITHOUT** further policy development.

Looking Ahead

- Unclear if the GNSO Council will be able to adopt the EDPD Recommendations given the level of consensus that it appears is developing.
- Unclear if the Board would adopt policy even if the GNSO Council approves.
- If it goes forward...
- If it does not go forward...

Discussion & Questions?