

Report of Meeting with members of the GAC, Law Enforcement Representatives, and the Negotiation Teams on the Registrar Accreditation Agreement (19 Sept 2012)

Location: Embassy Suites, Convention Center, Washington, D.C.

Attendees:

GAC/Law Enforcement Representatives:

In Person: Robert Flaim (Federal Bureau of Investigations), Christopher Landi (Department of Homeland Security), Christopher Malone (Department of Homeland Security), Veronica Miranda (Federal Bureau of Investigations), and Shaundra Watson (Federal Trade Commission)

Remote: Mick Moran (INTERPOL), Suzanne Raddell (NTIA), and Terri Stumme (Drug Enforcement Agency)

Registrars:

In Person: Becky Burr, Matt Serlin (MarkMonitor), Jeff Eckhaus (Enom), and James Bladel (GoDaddy)

Remote: Volker Greimann (Key Systems)

ICANN:

In Person: Samantha Eisner, Dan Halloran, John Jeffrey, Margie Milam, Kurt Pritz, Mike Zupke, Kevin Espinola (Jones Day), and Craig Johnson (Jones Day)

Issues Discussed:

- The law enforcement representatives and the GAC member explained that their participation in the meeting was for general clarification and informational purposes, and did not reflect the formal position of the GAC, any country, or agency. Separate consultations were necessary to update those who were unable to attend, and this was not expected to occur until after another draft of the RAA was posted by ICANN.
- The participants discussed the questions sent to the GAC with regard to privacy concerns arising out of certain of the GAC endorsed recommendations. Specifically, the participants noted the existence of the [WHOIS Conflicts of Law Procedures](#) that has been adopted by ICANN, and discussed how this process could be modified to address situations where either the WHOIS or Data Retention obligations might violate local laws.
- The participants then discussed specific modifications to the WHOIS Conflicts of Law Procedures, including:

- Suggestion that the subject of the procedure be broadened beyond WHOIS to include data retention issues as well.
- Suggestion that the trigger points to initiate the procedure be amended. Currently, the procedure states:

“At the earliest appropriate juncture on receiving notification of an investigation, litigation, regulatory proceeding or other government or civil action that might affect its compliance with the provisions of the Registrar Accreditation Agreement (“RAA”)...”

The participants noted that it might be better to have this procedure be triggered before the registrar/registry is faced with a proceeding. It was also suggested that the GAC be notified early in the process in order to expedite review of the issue, to enable them to reach out to the appropriate privacy protection authorities in a timely manner.

- The ICANN and Registrar Negotiation Teams are tasked with reviewing the current [WHOIS Conflicts of Law Procedures](#), to suggest appropriate revisions for discussion with the GAC and the broader ICANN Community.
- On the topic of the timing of the verification, some law enforcement representatives were willing to consider a model where verification occurs after resolution of the domain name, *provided that* (i) the registrars agree to verify at a minimum two data points (email AND phone number), and (ii) ICANN create a pilot program to test the effects of verification prior to the domain name’s resolution.
- Guaranteed Reassessment: Law Enforcement representatives suggested that the WHOIS Accuracy Program be generally reviewed after 12-18 months of operation to determine the effectiveness of the verification measures initially adopted.
- Re-verification of WHOIS information: The participants discussed the frequency of reverification of WHOIS information, and specifically, explored adopting an “events-based trigger” model. Some of the trigger points suggested for further evaluation include: renewal, update of fields that were previously verified, upon transfers. Registrars and ICANN to consider which events would be appropriate.
- Retention Periods for Customer Data: The participants discussed the Registrar proposal to have a bi-furcated data retention schedule: six months for the more sensitive information, two years for the remainder. Law Enforcement representatives appear willing to consider this registrar proposal.
- Types of Customer Data sought: Of the additional data to be collected as requested by the LE representatives, registrars expressed concerns regarding identification of other services offered by Registrar to customer that were not related to domain registration. Registrars

cited concerns that this could be beyond ICANN's scope & remit. The LE representatives appear willing to consider this registrar proposal.

- Discussion of "to the extent commercially practicable" limitation. The registrars have suggested that the data retention obligation be modified to retain "log files, billing records, and to the extent commercially practicable, other records containing communication source and destination information..." After further evaluation, it was determined that this language was attempting to address changing technologies and to allow for items of data to be removed from the Data Retention Specification should it no longer be relevant or useful. The law enforcement representatives appeared receptive to this approach.