

Nathalie Peregrine: Welcome all, to the NCSG Ideation Workshop on Revised ICANN Procedure for Handling WHOIS Conflicts with Privacy Law on Monday 29 May 2017 at 13:00 UTC

Ayden Férdeline: Hi all, thanks for coming today

Farell FOLLY (africa 2.0): ok it works

Ayden Férdeline: Here is a link to our draft comment, it isn't necessary to open the file just yet but we might look at it later.

https://docs.google.com/document/d/1IA-O2jiPv5JMoCYpG5HD0S_5O3yaiYkoRvflI3YsTX4/edit?usp=sharing

Joan Kerr: Hello Everyone

Ayden Férdeline: thanks for joining the call!

Farell FOLLY (africa 2.0): hello Joan

Joan Kerr: Hi Farell. How are you

Ayden Férdeline: We will start in 3 minutes

Louise Marie Hurel: Hi everyone!

Andreea Rusu: Hello everyone!

Stephanie Perrin: apologies for being late

Bruna Santos: hello, everyone!

Stephanie Perrin: Thanks for doing all the preparation for this Ayden and all!

Louise Marie Hurel: +1 Stephanie

Farzaneh Badii: yes

Louise Marie Hurel: yes

Farzaneh Badii: we can hear you

Farzaneh Badii: I'd say we have a technical definition of public comment, which is publicly commenting as a group or an individual on a policy document

Dina Solveig Jalkanen: On an entire document or smaller recent alterations to one.

Louise Marie Hurel: yes

Dina Solveig Jalkanen: Do all issues requesting a public comment receive one? If not, what is the percentage of those that go uncommented?

James Gannon: All are put out for comment, most would receive at least one

Rafik: @Dina some topics receives few comments. not necessarily because they are not relevant but because there are several in same time and people end up prioritizing...

Dina Solveig Jalkanen: Working group is free to disregard the contents of a comment?

James Gannon: There is no obligation to incorporate every comment no. But to consider them yes

James Gannon: *consider

Rafik: @Dina staff summarize the comments , then working group review the comments, try to respond to them but not incorporating everything

David Cake: Whois we are talking about the existing registration data service

Dina Solveig Jalkanen: lookup, but I think we should hear details from ICANN :)

David Cake: rather than the protocol by which it is currently delivered

Dina Solveig Jalkanen: Rafik, thank you, that makes sense

James Gannon: "David Yes important distinction

Stephanie Perrin: Consideration of comments, in my view, is much less rigorous than it is in some regulatory settings. I used to work on public comments that the Department of Communications/Industry has to publish in the federal register. one had to be very scrupulous in how those comments were disposed of, a but of course in that milieu there is a Minister responsible to a parliament. ICANN is different, on occasion we have had our comments barely noted.

James Gannon: <https://whois.icann.org/en/primer>

James Gannon: WHOIS is 3 things

James Gannon: The information that is collected at the time of registration of a domain name or IP numbering resource and subsequently made available via the WHOIS Service, and potentially updated throughout the life of the resource;The WHOIS Protocol itself, which is defined in RFC 3912; orThe WHOIS Services that provide public access to domain name registration information typically via applications that implement the WHOIS protocol or a web-based interface

Julf Helsingius (NCPH NCA): There are two very different issues - the access protocol and the actual data

Dina Solveig Jalkanen: Could you repeat the question?
(bad connection)

Farzaneh Badii: oh now that I have Tapani's phone number from this WHOIS form I can call him up now and ask him to attend this call.

Stephanie Perrin: Sorry I had to step away and take a call.

Julf Helsingius (NCPH NCA): I guess we have to separate whois information about a single individual, and information about an organisation

James Gannon: Depends on the country Julf

Julf Helsingius (NCPH NCA): sure

Stephanie Perrin: It is very awkward to do that although technically the difference is important under data protection law

Julf Helsingius (NCPH NCA): but pretty much everything always depends on the country :)

Stephanie Perrin: My own policy position, and one we advanced in the discussions on privacy proxy services (the PPSAI pdp) is that we should avoid trying to determine who is an individual and who is a company,

although if a company wishes to declare itself they are welcome

Bruna Santos: Brazil does not have a privacy law yet. There are discussions in both at the lower house and at the senate. But we have not yet come to a conclusion regarding the different proposals

Stephanie Perrin: In most nations, the ability to protect groups depends on the constitution. More difficult that trying to interpret those rights under DP law

Louise Marie Hurel: We have the Brazilian Internet Bill of Rights as a legal mechanism that actually upholds privacy as one of the guiding principles to Internet policy, development and governance -- also adding to the principle outlined in our Constitution. However, we are currently debating a specific framework for privacy and data protection.

Louise Marie Hurel: Several proposals as Bruna said

Farell FOLLY (africa 2.0): @stephanie but most of the time as of whois registration data, even company data will contain individuals information

Dina Solveig Jalkanen: It doesn't.

Bruna Santos: For example, the concept of personal data is outlined by the Access to Information bill!

Louise Marie Hurel: So our national panorama is one of competing understandings so as to what are the interests that are guiding privacy law

Bruna Santos: and jurisprudence

James Gannon: @Ayden IMportant to note that that will be changing under PPSAI implementaion

Julf Helsingius (NCPH NCA): Ayden - isn't that more an issue of transparency rather than an issue of existence of proxy services?

Joan Kerr: The Personal Information Protection and Electronic Documents Act (PIPEDA) is federal legislation passed in 2001 and fully implemented on January 1, 2004. While some provinces have passed their own privacy legislation, Ontario has not, so the federal legislation applies here.

Rafik: Tunisia has DP law to be updated since parliament just voted to ratify the convention 108

David Cake: there is a national privacy act in Australia. it puts obligations on companies.

James Gannon: I do belive that Stephanie in fact wrote a good chunk of PIPEDA =)

David Cake: but discussion about legal changes such as a privacy tort are ongoing. waiting for data breach legislation.

Bruna Santos: A curiosity is that when Marco Civil was written, the Idea of having privacy as one of the guiding principles to Internet policy, development and governance was to reinforce the need of an specific framework that the government was working on. (in a very soft power way)

Bruna Santos: This Government proposal has been sent to the Senate and the debate now is between proposals (one from a Senator that is now in our Ministry of foreign affairs and the one that the government drafted)

James Gannon: Ireland has a Data Protection Act in line with the EU Directives

Joan Kerr: @Stephanie, we have always thought PIPEDA covered Ontarions\

Stephanie Perrin: I think it sounds like the Brazilian framework idea is similar to what we were trying to do in Canada.

Ayden Férdeline:

<https://docs.google.com/document/d/1IA->

O2jiPv5JMoCYpG5HD0S_5O3yaiYkoRvflI3YsTX4/edit?usp=sharing

Stephanie Perrin: We had quite a difficult debate in Canada about the scope of what the federal government ought to be doing

Bruna Santos: Yes, Stephanie, I see some similarities in both processes

Stephanie Perrin: I spent quite a few years looking at other federal states, did not look at Brazil because of my language issues....but it is interesting how federal states have intervened. US used their powers in interstate commerce to stop racial discrimination, a pretty creative use of the power that made our efforts look pretty easy in comparison.

Bruna Santos: I believe in Brazil, both Marco Civil and the Personal Data draft bill have been an effort of the Federal Government against some terrible regulation attempts of both the Senate and the Lower House.

Stephanie Perrin: In Canada we developed a standard for privacy protection first, through the Canadian Standards Association. We attempted then to take that management standard to the ISO in order to have it form the basis for an international management standard, but were blocked by the US.

Stephanie Perrin: in the meantime, we legislated compliance to that standard. There were many reasons for choosing a standards based approach (lawyers hate it) which I could go on and on about, if you are interested

Bruna Santos: yes, please! Im interested on the subject! Mainly because I have followed a part of the drafting process while at the government

Stephanie Perrin: Well lets take this offline....It might be a option for you if you are interested. Solves trade discrimination issues because compliance with it can be indepently audited without the need for regulation....

Bruna Santos: definitely!

Farell FOLLY (africa 2.0): what the trigger is in this context?

Stephanie Perrin: The new trigger is a letter from a nationally respected law firm.

Stephanie Perrin: FOrmerly, it was just a letter from a DPA with the authority to sanction (and not all dpas have that power, some have to take you to a tribunal or a court) telling you that you were breaking the law

Farzaneh Badii: so it's now law firms enforcing the law?

Joan Kerr: Who has the ultimate authority to enforce

Farell FOLLY (africa 2.0): thanks Stéphanie

Stephanie Perrin: TBH, I was so disgusted at the end of this I wrote my dissent and walked away. In order to participate in drafting this comment, I will have to go over the precise wording that we came up with in the final new trigger. the REgistrars said it would not work, they had an effort to block it at the GNSO, but then abandoned that and said yes we will pass it in return for starting a new, more broadly scoped cttee this fall. Just what we need, says I, another totally frustrating committee.....

Farell FOLLY (africa 2.0): well

Stephanie Perrin: I would say go to the website of the WHOIS conflicts with law....

Stephanie Perrin: listen to a couple of the transcripts....

Stephanie Perrin: we argued over the same issues for weeks on end, so I would say random selection ought to take you to some of the debate pretty quickly.

Stephanie Perrin: Privacy impact assessment, privacy policy, legal risk assesement.....

Stephanie Perrin: Normally, you don't force the regulated bodies to independently come up with what amounts to a legal risk assessment individually.

Stephanie Perrin: Note that if one Irish registrar gets a waiver, it did not mean that all the others automatically got one, even though it was the same law and contract

Dina Solveig Jalkanen: Stephanie, it was interesting to read your comments, thanks!

Louise Marie Hurel: Thank you all

Rafik: thnks Ayden

Louise Marie Hurel: Thanks Ayden

Farzaneh Badii: thanks a lot Ayden

Stephanie Perrin: Thanks Ayden, great approach to doing comments!

Joan Kerr: Thanks Ayden, All

Maryam Bakoshi: Thanks all, good bye

Farell FOLLY (africa 2.0): thanks well done

Bruna Santos: thank you!