Ozan Sahin:Hello, welcome to NCPH Intersessional Meeting! My name is Ozan and I will be monitoring this chat room.

Ozan Sahin:Please kindly note that remote participants are considered to be observers in the NCPH Intersessional meeting. You may still post comments or questions in the chat box but they will not be read out loud by the remote participation manager. On the other hand, in-room participants may bring these questions or comments forward during the discussion.

Ozan Sahin:All chat sessions are being archived and follow the ICANN Expected Standards of Behavior: https://meetings.icann.org/en/expected-standards-behavior

Ozan Sahin:GNSO NCPH Intersessional Meeting Day 2 will start shortly.

Lori Schulman:Good Morning/Afternoon/Whatever...

Anne Aikman-Scalese (IPC):Hey Lori - good day to you too!

steve metalitz:Hello all. Any estimated start time?

Griffin Barnett:should I be hearing audio right now?

Ozan Sahin:We will start momentarily, participants are still taking their seats now.

Anne Aikman-Scalese (IPC):I just want to thank ICANN and the NCPH Leadership for the Adobe remote participation. This is a very important time for everyone in the community to be up on current developments. Thank you!

Ines Hfaiedh:Hi everyone !

GANGADHAR PANDAY:Ganga says Hi to all

Lori Schulman:Can the new DP Board issue binding opinions? I thought it was only guidance that it could not bind governments.

steve metalitz:Re privacy/proxy: technically this is no longer a GNSO matter, it is an implementation review team staffed by GDD.

steve metalitz:And the team's position has been to proceed with its work with the understanding that the GDPR resolution may affect the implementation.

steve metalitz:ICANN has studied take up of P/P services several times and found 20-25% of all gTLD registrations are p/p. Of course it could have gone up since then.

Mary Wong:Note that an IRT cannot be a forum where the original PDP recommendations are re-opened.

Heather Forrest:Thanks, Mary - a very important procedural point!

Claudia Selli:@Lori recital 136 says binding oipinion can be issued for diputes between supervisory authorithies (one of the tasks of the EDPB Art.70 of GDPR) : In applying the consistency mechanism, the Board should, within a determined period of time, issue an opinion, if a majority of its members so decides or if so requested by any supervisory authority concerned or the Commission. The Board should also be empowered to adopt legally binding decisions where there are disputes between supervisory authorities. For that purpose, it should issue, in principle by a two-thirds majority of its members, legally binding decisions in clearly specified cases where there are conflicting views among supervisory authorities, in particular in the cooperation mechanism between the lead supervisory authority and supervisory authorities concerned on the merits of the case, in particular whether there is an infringement of this Regulation.

Anne Aikman-Scalese (IPC):Thank you Claudia - this is very helpful. I had understood that the Article 29 Working Party and Hamilton recommended that ICANN org work with the Belgium DPA since the ICANN office is in Belgium.

steve metalitz:@Steve D, the PPSAI IRT plans to post implementation documents for public comment prior to the San Juan meeting.

Mary Wong:I can't speak for GDD staff, who are leading the implementation effort, but here is a question that occurred to me may be useful for the group's consideration: What are the specific

provisions, elements and/or aspects of the proposed P/P accreditation agreement and criteria/requirements that present GDPR compliance problems?

Mary Wong:There is a process under the IRT Principles for referring questions back to the Council.

Mary Wong:These are the IRT Principles that were approved by the GNSO Council; see in particular Principles E & G: https://urldefense.proofpoint.com/v2/url?u=https-3A__gnso.icann.org_en_council_irt-2Dprinciples-2Dguidelines-2D23aug16-2Den.pdf&d=DwIFaQ&c=FmY1u3PJp6wrcrwll3mSVzgfkbPSS6sJms7xcl4I5cM&r=SJoAZJPf4sll7c5HM-90jeUSDBNV8i1H6DgoihUn1_U&m=ZUxb-dhrfKWNjL3o50m1Nd1beiTJxONguIY9NySFCa4&s=AkUKvM-ewcyfYfxku2HjuJ9A0TPuVX_k1yqcxrco8bY&e=

Romina Florencia Cabrera:hi all

Mary Wong:The GNSO Council also approved a GNSO Guidance Process, under which, in certain circumstances, the Council can provide clarity on implementation of PDP recommendations: https://urldefense.proofpoint.com/v2/url?u=https-3A__gnso.icann.org_en_council_annex-2D5-2Dggp-2Dmanual-2D01sep16-2Den.pdf&d=DwIFaQ&c=FmY1u3PJp6wrcrwll3mSVzgfkbPSS6sJms7xcl4I5cM&r=SJoAZJPf4sll7c5HM-90jeUSDBNV8i1H6DgoihUn1_U&m=ZUxb-dhrfKWNjL3o50m1Nd1beiTJxONguIY9NySFCa4&s=EqDK4PFUZx_fLEY0WD66LCanh9usITi66BupnqM0cPQ&e=

Romina Florencia Cabrera:thanks

steve metalitz:+1 to Susan's view

steve metalitz:Almost by definition, imlplementation of PPSAI will bring us CLOSER to GDPR compliance than we are now because the status quo is almost no substantive rules about p/p. We have no enforceable standards about p/p services.

Romina Florencia Cabrera:Query: how will the new domains be reflected in the new European data protection regulation, in its design? And its vulnerability in security?

steve metalitz:The decision to treat privacy and proxy services similarly was consensus view of the PPSAI PDP WG.

Romina Florencia Cabrera:thanks

Jeff Neuman:As weird as this sounds, Consensus Policies do not apply to the ICANN Org

Anne Aikman-Scalese (IPC):@Jeff - Not sure I agree because Consensus policy has to be adopted by the ICANN Board and ICANN staff has to implement.

Jeff Neuman:SOmething I tried to point out during the drafting of the new Bylaws and the transition, but I guess it was not understood at the time

Jeff Neuman:Anne - my point is that agreements (contracts) require registries and registrars to follow Consensus Policies. There is nothing in the Bylaws that requires ICANN to follow ICANN policies

Anne Aikman-Scalese (IPC):ICANN staff also has to enter into Registry Agreements that reflect Consensus Policy - that is what is so strange about the total suspension of ALL WHOIS policy.

Jeff Neuman:In other words, the GNSO may propose policies with respect to registries and registrars, but not with respect to ICANN as an organization

Anne Aikman-Scalese (IPC):@Jeff - Consensus Policy does not become policy and is not inserted in the Registry Agreement until it is adopted by the ICANN Board.

Jeff Neuman:Right ICANN imposes requirements on the contracted parties. BUt that is a 1 way street

Jeff Neuman:Neither the GNSO nor the ICANN community can impose policies on ICANN

Jeff Neuman:[Other than through changes in the Bylaws]

Jeff Neuman:And the bylaws are not changed by "Consensus Policies"

steve metalitz:ICANN has taken the position that the Dutch DPA letter is sufficient to invoke the Whois conflicts procedure.

Anne Aikman-Scalese (IPC):GNSO recommends policy. The Board can refuse that policy with a vote of 2/3 of the Board under the ByLaws. If ICANN adopts policy, it then implements that policy. We are talking about gTLD policy here, aren't we?

steve metalitz:https://urldefense.proofpoint.com/v2/url?u=https-3A__www.icann.org_en_system_files_correspondence_jeffrey-2Dto-2Dsprey-2D01nov17-2Den.pdf&d=DwIFaQ&c=FmY1u3PJp6wrcrwll3mSVzgfkbPSS6sJms7xcl4I5cM&r=SJoAZJPf4sll7c5HM-90jeUSDBNV8i1H6DgoihUn1_U&m=ZUxb-dhrfKWNjL3o50m1Nd1beiTJxONguIY9NySFCa4&s=fFyEK_xpVVuiRkWOMIvAgWUVwf8oBipQbkf-jnHBgec&e=

Jeff Neuman:@Anne - The Board is voting on a policy to impose on registries and registrars. GDPR compliance is not about that. It is about whether ICANN as an organization is complying with the law by requiring the registries and registrars to do certain things.

Jeff Neuman:It is a very important distinction

Jeff Neuman:Again, I REALLY stressed over and over again during the transition that there should be a way to develop consensus policies that would bind ICANN, but that was rejected

Mary Wong:Just noting that this is the current Procedure, which is to be reviewed periodically by the GNSO (i.e. it is not the underlying Consensus Policy that mandated, in part, the creation of a Procedure).

Jeff Neuman:To take it out of this context....a PDP can determine that registries and registrars do something and ICANN enforce it. But a PDP cannot be binding on ICANN ORG to do or not do something .

Jeff Neuman:Only a Bylaws change can do that

Mary Wong:How to move forward with a possible review of the Procedure is currently under discussion by the GNSO Council.

Margie Milam:It came out of a PDP so why isnt it a Policy?

Mary Wong:No, the underlying Policy included a direction to ICANN to develop a Procedure - and this is what was developed and that the Council is considering next steps for.

Margie Milam:right - it is merely the implementation of a policy

Jeff Neuman:I will give an example out of thid context. A PDP can require that registrars collect certain information from registrants (assuming it is compliant with the law). But a PDP could not require that ICANN Org collect information .

Mary Wong:This is the language of the underlying Policy, pursuant to which the Conflicts with National Law Procedure was developed: "ICANN should develop and implement a procedure for dealing with the situation where a registrar (or registry, in thick registry settings) can credibly demonstrate that it is legally prevented by local mandatory privacy law or regulations from fully complying with applicable provisions of its ICANN contract regarding the collection, display and distribution of personal data via Whois. The goal of the procedure should be to resolve the conflict in a manner conducive to stability and uniformity of the Whois system."

Margie Milam:Thanks Mary - the policy is still solid -- its just a question of whether the implementation should be updated

Romina Florencia Cabrera:thanks

Jeff Neuman:All - The INterim models are not about the registries and registrars complying with law. It is about ICANN as an organization complying with national law. Thus the development of the Interim Policy (according to ICANN) does not need to go through this policy. That said, if a registry or registrar wants to deviate from the Interim Model, then that registry or registrar may need to go through the Conflicts Procedure

Jeff Neuman:I hope that makes sense

Jeff Neuman:[And by the way, I dont like that fact]

Jeff Neuman:But it is the position ICANN is taking

Anne Aikman-Scalese (IPC):Hi Jeff - What exactly does the RA say about emergency measures to suspend RA provisions or to change policy and how that might become permanent? (I know there is a provision dealing with this in the RA - can't remember where it is.)\

Jeff Neuman:THere is a provision on Temporary Policies, but that can only be in place for 1 year.

Jeff Neuman:https://urldefense.proofpoint.com/v2/url?u=https-3A__newgtlds.icann.org_sites_default_files_agreements_agreement-2Dapproved-2D31jul17-2Den.html&d=DwIFaQ&c=FmY1u3PJp6wrcrwll3mSVzgfkbPSS6sJms7xcl4I5cM&r=SJoAZJPf4sll7c5HM-90jeUSDBNV8i1H6DgoihUn1_U&m=ZUxb-dhrfKWNjL3o50m1Nd1beiTJxONguIY9NySFCa4&s=v6cPjxvcLSJz2FeohgHxIhEPey_UNJ52_BYFAGK7B4g&e=

Anne Aikman-Scalese (IPC):Did ICANN refer to that Temporary Policy provision when it issued the Interim Advice from Compliance re no enforcement of the registration data requirements in the RA?

Jeff Neuman:Specification 1, Section2

Jeff Neuman:It doesnt have to yet.

Jeff Neuman:Because it is choosing a model which it believes it needs to for IT to comply. Not for the registries or registrars to comply

Jeff Neuman:When ICANN tries to enforce that model on the registries and registrars, it may then trigger it

steve metalitz:No slide on RDS PDP is visible.

steve metalitz:thanks I see slide now.

Anne Aikman-Scalese (IPC):Thank you Jeff. From the Registry Agreement: Specification 1: Section 2 . This raises the question about whether proper procedure was followed in the suspension of the WHOIS policy in the RA. Was there a Board vote. Was this Section dealing with Temporary Policies invoked? 2.   Temporary Policies. Registry Operator shall comply with and implement all specifications or policies established by the Board on a temporary basis, if adopted by the Board by a vote of at least two-thirds of its members, so long as the Board reasonably determines that such modifications or amendments are justified and that immediate temporary establishment of a specification or policy on the subject is necessary to maintain the stability or security of Registry Services or the DNS ("Temporary Policies").2.1.   Such proposed specification or policy shall be as narrowly tailored as feasible to achieve those objectives.

Jeff Neuman:@Anne - ICANN's argument (again not that I like it) is that it is NOT suspending the current WHOIS model. It is suspending its enforcement of the policy.

Mary Wong:For those delegates who are physically at the venue, there are snacks set out in the snack area as we don't have an official break at this time.

Ozan Sahin:switching to next session, thank you