

AC Attendance - 44 Members

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|-------------------------------|-----------------------------|
| Alan Greenberg | Malisa Richards |
| Alan Woods (Donuts) | Marc Anderson |
| Andrew Sullivan | Margie Milam |
| Benjamin Akinmoyeje (Nigeria) | Mason Cole |
| Benny Samuelson / Nordreg AB | Maxim Alzoba (FAITID) |
| Beth Bacon | Michael Hammer |
| Bradley Silver | Michael Palage |
| Brian J Winterfeldt | Nathalie Coupet |
| Charles Gomes | Nick Shorey |
| Chris Wilson | Phil Marano |
| Craig Urness | Rod Rasmussen |
| David Cake | Roger Carney |
| Dina Solveig Jalkanen | Sam Lanfranco |
| Evan Smith | Sara Bockey |
| Greg Shatan | Sara Marcolla - EC3 |
| Griffin Barnett | Scott Hollenbeck (Verisign) |
| GZ Kabir | Stephanie Perrin |
| James Galvin (Afilias) | Steve Metalitz |
| Jenn Taylor Hodges | Susan Kawaguchi |
| John Bambenek | Tapani Tarvainen |
| Klaus Stoll | Tomslin Samme-Nlar |
| Laura Margolis | Trang Nguyen |

NOTE: Maria Laura (non-member joined, removed from AC Room within first 15 minutes)

On Audio Only: none

Apologies: Rubens Kuhl, Bastiaan Gosling, Gregory Mounier, Tim O'Brien, Michele Neylon, Lisa Phifer (staff)

Staff:

Karen Mulberry
Marika Konings
Trang Nguyen
Berry Cobb
Dennis Chang
Fabien Betremieux
Herb Waye Ombuds
Julie Bisland

AC Chat:

Julie Bisland:Welcome to the GNSO Next-Gen RDS PDP Working Group teleconference on Tuesday, 16 January 2018 at 17:00 UTC

Julie Bisland:Agenda wiki page: https://urldefense.proofpoint.com/v2/url?u=https-3A_community.icann.org_x_RAByB&d=DwIFaQ&c=FmY1u3PJP6wrcrwlI3mSVzgfkbPSS6sJms7xcl4I5cM&r=QiF-05YzARosRvTYd84AB_UYInlydmFcjNmBM5XgySw&m=kvNr22cwObhfohiF2pUB5hjraGIlurtNHWMGRv0m9bs&s=lzQNUiVCOJ1z78Ud7srYczshK8ypWkrZ-XmMyOVjfDk&e=

Michael Hammer:Greetings. Looking forward to an interesting call.

Maxim Alzoba (FAITID):Hello All

Marika Konings:You all have scroll control

andrew sullivan:Apologies for tardiness. Every experience with Adobe Connect is an adventure.

Sam Lanfranco:hello all...

Maxim Alzoba (FAITID):I am not sure if it is offtopic completely, but ICANN list of models (for personal data) Registry Registrant ID (for Model 2) in Appendix 2 makes me wonder if ICANN's legal consultants are aware of the difference between person's ID (as passport) and Registrant ID in the Registry system (as a token) https://urldefense.proofpoint.com/v2/url?u=https-3A_www.icann.org_en_system_files_files_interim-2Dmodels-2Dgdpr-2Dcompliance-2D12jan18-2Den.pdf&d=DwIFaQ&c=FmY1u3PJP6wrcrwlI3mSVzgfkbPSS6sJms7xcl4I5cM&r=QiF-05YzARosRvTYd84AB_UYInlydmFcjNmBM5XgySw&m=kvNr22cwObhfohiF2pUB5hjraGIlurtNHWMGRv0m9bs&s=GI9EcikoQTcyPKnJUUX2egHYONBBjjBAKpJlgFBgBZY&e=

Maxim Alzoba (FAITID):and removal of the Registrant ID will lead to much trouble for cyber investigations

Michael Hammer:Anyone else not seeing the pdf?

Marika Konings:@Michael - you can also download it here:

https://urldefense.proofpoint.com/v2/url?u=https-3A_community.icann.org_download_attachments_74580036_Highlighted-2520examples-2520of-2520possible-2520legitimate-2520processing-2520of-2520registration-2520data-252016-2520Jan-252018-2520v2.pdf-3Fversion-3D2-26modificationDate-3D1516117855522-26api-3Dv2&d=DwIFaQ&c=FmY1u3PJP6wrcrwlI3mSVzgfkbPSS6sJms7xcl4I5cM&r=QiF-05YzARosRvTYd84AB_UYInlydmFcjNmBM5XgySw&m=kvNr22cwObhfohiF2pUB5hjraGIlurtNHWMGRv0m9bs&s=VDJZwnAVRfKTS6ZzEzLZMXZkUZj5p5CxR42auRIR8u0&e=

Marika Konings:But you may need to restart your Adobe Connect.

Michael Hammer:Thanks

Laura Margolis:thank you!

Julie Bisland:Michael, you might need to update your plugins:

https://urldefense.proofpoint.com/v2/url?u=http-3A_tinyurl.com_icannactest&d=DwIFaQ&c=FmY1u3PJP6wrcrwlI3mSVzgfkbPSS6sJms7xcl4I5cM&r=QiF-05YzARosRvTYd84AB_UYInlydmFcjNmBM5XgySw&m=kvNr22cwObhfohiF2pUB5hjraGIlurtNHWMGRv0m9bs&s=HhRadBvNwHSxjUdQKwJenY0TOAzZyb78vEL5zjn98aM&e=

Benny Samuelsen / Nordreg AB:All this are legitimate use of data. Not equal as legitimate purpose for collecting

Stephanie Perrin:Jim is correocr.

Stephanie Perrin:Correct, that is....

Nathalie Coupet:+1

Stephanie Perrin:This is unfortunately worded ambiguously in the European law, now bolstered by the Charter.

Stephanie Perrin:This is why in Canada we separated purpose for collection, use and disclosure.

Bradley Silver:It seems odd to me that something would be a legitimate purpose for "use" but not collection.

James Galvin (Afilias):The use question gets asked after collection.

Michael Palage:I think the "collection" always needs to be viewed through the lens of Data Minimization

Stephanie Perrin:The article 29 clarification documents are useful background documents to read in interpreting these matters.

Marika Konings:the definition of processing in the GDPR is: 'processing' means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction

Sam Lanfranco:Is it useful to distinguish between collection for internal purposes and collection for external purposes. Both are "processing" but are different.

Stephanie Perrin:Proportionality principle is important in the interpretation of purposes.

James Galvin (Afilias):If you think "use" is necessary then you need to answer the "legitimate interest" question first, before collection. That's how I understand this problem space.

Maxim Alzoba (FAITID):in the text of GDPR processing mentioned in separate clauses then collection
steve metalitz:Art. 4(2) of GDPR defines "processing" to include both "collection" and "disclosure by transmission, dissemination or otherwise making available" oin

Maxim Alzoba (FAITID):it is possible to check https://urldefense.proofpoint.com/v2/url?u=https-3A_gdpr-2Dinfo.eu&d=DwlFaQ&c=FmY1u3PJp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=QiF-05YzARosRvTYd84AB_UYInlydmFcjNmBM5XgySw&m=kvNr22cwObhfohiF2pUB5hJraGllurtNHWMgrv0m9bs&s=e06Bp9QJSJWtCjZfzBbgEoNxdakAsvOsj-NRfpabr2g&e= - via search

Maxim Alzoba (FAITID):and it means that it is not the single idea but two different ideas
steve metalitz:Art. 4(2) of GDPR defines "processing" to include both "collection" and "disclosure by transmission, dissemination or otherwise making available" of personal data

Marika Konings:@Maxim - it does not appear as a separately defined term in the regulation as far as I can see

Maxim Alzoba (FAITID):@Marika, in the text of GDPR it is mentioned differently

Bradley Silver:I had understood that a legitimate purpose should "follow" the data, from collection through use. And I'd like to understand better how data collected for one legitimate purpose could be used for another purpose, while arguing that the data could not have been collected for that (second) purpose. This principle of "found " data, is confusing .

Marika Konings:@Maxim - it is part of the definition of processing as noted above

Maxim Alzoba (FAITID):legal texts are to be read line by line and to be understood literally

James Galvin (Afilias):@steve - yes, collection is processing, but I don't interpret this to mean processing is collection. This is the ambiguity problem. Right?

Maxim Alzoba (FAITID):literally :)

Stephanie Perrin:Collection is still very closely governed, as a processing activity, by the data minimization principle and the proportionality principle.

andrew sullivan:The _entire reason_ for the system at all is for domain name system management

Laura Margolis:Marika, can you please send me the link for downloading this one?

Maxim Alzoba (FAITID):unfortunately in definitions of GDPR legitimacy is tied to EU legislation only

andrew sullivan:that is a _sine qua non_ of having the system, and so anything that is necessary for it is by definition legitimate for these purposes therefore.

Marika Konings:@Laura - the link to the handout is https://urldefense.proofpoint.com/v2/url?u=https-3A_community.icann.org_download_attachments_74580036_Handout-2D16January-2DRDSWGCall-

[2Dv4.pdf-3Fversion-3D1-26modificationDate-3D1516120614937-26api-3Dv2&d=DwIFaQ&c=FmY1u3PJp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=QjF-05YzARosRvTYd84AB_UYInlydmFcjNmBM5XgySw&m=kvNr22cwObhfohiF2pUB5hjaGIlurtNHWMGRvOm9bs&s=OB8rj59i9_J6BTFBMj4ciETdGmORkGNPHCwVgO_XEZA&e=](https://www.ietf.org/proceedings/81/1/10)

Stephanie Perrin:Collection has to be considered a processing activity in order to be governed by all the other requirements (eg requirements for collection, security requirements, etc)

Stephanie Perrin:It would save us all a lot of time if we invited someone involved in the complex matter of drafting this thing, to come and speak to us. Eg the DPAs who came to Copenhagen, or Peter Kimpian who has worked on various aspects of it.

andrew sullivan:It's stronger than what James is saying about some things will happen". The DNS is a distributed database and the Internet is a distributed system without anyone in control

andrew sullivan:and without the necessity of pre-existing contractual relations between participants
Laura Margolis:thank you Marika!

andrew sullivan:therefore, you need to be able to contact other operators

Stephanie Perrin:With great respect to Michael Hammer's point, a primary purpose of setting up ICANN was to permit further commercialization of the Internet without the same US government control, no?

Maxim Alzoba (FAITID):@Stephanie, I am not sure we know the set of questions to ask the DPA

Stephanie Perrin:ICANN is the data controller, the purpose has to relate to its mandate

Stephanie Perrin:I can whip up a set of questions rather quickly Maxim :-)

andrew sullivan:@Stephanie: I think the purpose of ICANN is captured in its mission statement.

Michael Hammer:ICANN!="The Internet"

Stephanie Perrin:Yes Andrew, I certainly hope it is. Question is the interpretation of that in the light of the data limitation and proportionality principles.....

Stephanie Perrin:++1

Michael Hammer:That is why I used the phrase "inherent to functionality".

Michael Hammer:How much of the Internet is dependent on DNS?

andrew sullivan:@Michael: indeed.

steve metalitz:@Andrew and Michael , so are only purposes that are "inherent to functionality" "legitimate purposes" in your view? Or is that criterion the minimum and other purposes may also be legitimate?

Alan Greenberg:I did not think we were talking about DISCLOSURE here. That is a different issue.

Michael Hammer:I don't think those two are the only legitimate purposes. Greg asked specifically about those two agreements.

James Galvin (Afilias):One important detail is the distinction between what is "mandatory" versus what is optional. I believe this discussion is about what is mandatory. Personally, I'm a lot less opinionated about what may be optional or agreed to between two parties.

Michael Hammer:If you read WG Agreement 46, that same wording could also be used for anti-abuse efforts.

andrew sullivan:I think that the DNS is the Internet's primary naming system, and it needs a registration directory service to make the Internet's decentralized operation work. In particular, to make a system that does not require pre-existing contracts among everyone, everyone involved in the operation needs to be able to contact one another. That's why 46 and 48 are legitimate purposes for collection

Stephanie Perrin:Alan, if certain data needs to be shared (without contractual arrangements) in order for the network to function then we are inherently talking about disclosure

andrew sullivan:I hope the ^ summary is close enough to be useful

Stephanie Perrin:yes

andrew sullivan:@Stephanie: yes, the data needs to be shared and it is disclosure. and the answer is that if you want a domain name in the infrastructure layer of the Internet, then you need to consent to this disclosure

andrew sullivan:If you don't consent to that, don't get yourself a domain name in the infrastructure layer

Greg Shatan:Andrew's approach and analysis makes a lot of sense to me.

Stephanie Perrin:Exactly, ANDrew, and I think this is one of the primary hurdles we keep smacking into as we take this methodology to achieve consensus.

James Galvin (Afilias):+1 andrew

Michael Hammer:I agree with what Andrew wrote with the note that people can use private registration services but then the service needs to be on the hook as if they were the registrant.

Michael Hammer:"The operation was a success but the patient died".

Marika Konings:It is already there :-)

Maxim Alzoba (FAITID):will total use of resellers resolve the issue? (no person's info anymore :)

Marika Konings:Note slide 4 also identified a couple of possible criteria

Marika Konings:which are also on slide 6 :-)

Michael Palage:Chuck if Andrew's definition is valid that it would work for all domain names, not just gTLD? If we can point to ccTLD that operate within the DNS without disclosing data doesn't that undercut Andrew's broader argument. When making this broader statements we need to see if the definition holds on the ccTLD side of the eco-system

andrew sullivan:@Michael: the fact is that many registrations in many ccTLDs are in fact problematic

Michael Hammer:"The mission of ICANN is to coordinate the stable operation of the Internet's unique identifier systems."

andrew sullivan:and many ccTLDs that operate this way don't get treated as legitimate infrastructure because they're so hard to rely on.

Michael Palage:coordinate does not equal dictate, and that is why most ccTLD have been reluctant to enter into formal contracts with ICANN

Stephanie Perrin:ICANN does not control policy on the ccTLD side of the house, correct? Therefore the countries are not bound by the limitations on ICANN's mission. A religious state, for instance, could limit registrations to those who are card carrying members of the ruling sect, just as a for instance.

Nathalie Coupet:Legitimate: necessary to enable non-contractual relations between parties who need to contact each other to make the public portion of the DNS work appropriately

andrew sullivan:If the counter-argument is that there will be lots of cases where the domain name works without my contact info or without a certificate, then that's not actually a counterargument

Michael Palage:@ andrew I am just trying to approach this from a data minimization lens, what is the base information for the DNS (gTLD & ccTLD) to work

andrew sullivan:what we need to know is whether ccTLDs that don't provide the necessary ability to contact the operator of the relevant domain have greater difficulty with DNS operations

Michael Hammer:@Michael, define "work".

Michael Hammer:This gets back to scoping and perspective.

andrew sullivan:I will point out that CIRA (ca) doesn't permit this contact of operators: the whois doesn't have such info in it. When Dyn had their Bad Day over a year ago, however, CIRA used its privileged access to the registration database to contact me in an effort to help

Herb Wayne Ombuds:Attending mediation training this week and class is about to start... gotta back out... all the best to everyone. Herb

andrew sullivan:it would have been better if that data were public, because then others could have helped make my operations better too

Michael Palage:@ Andrew - looking at the IANA records for .ARPA and .MIL there does not appear to be any Whois registrant data services available - so this infrastructure seems to work without an operational WHOIS and both of these TLD are nevertheless trusted

Maxim Alzoba (FAITID):@Michael, I am not sure EU DPA's have any degree of control over .MIL

Michael Hammer:@Michael, .ARPA and .MIL are not good examples in that they are corner cases rather than the norm. I'd also point out that no other gTLDs besides .MIL control nuclear weapons.

andrew sullivan:I hate to say this, but the MIL domain is widely known for being highly unreliable from the point of view of non-US military operators.

andrew sullivan:ARPA does not allow general registration of names under it, so it's not the same kind of TLD infrastructure as others

Michael Palage:Agreed EU has no control over .MIL :-) - I am just asking the bigger question of do we need Whois for the system to work and if so what is the min data set. VRSN has operated the .COM and .NET successfully without thick data

andrew sullivan:Moreover, the MIL database is controlled entirely inside a single organization, which has a different internal communications system

andrew sullivan:The com and net databases are not themselves thick at the registry, but the registry system is not the RDS

andrew sullivan:The RDDS is a distributed database which may include data from the registry of the domain as well as all its registrars

Stephanie Perrin:Rod is correct. This is certainly a battlefield I am prepared to die on. The data is available for LEA and cybercrime investigator use, but you cannot make this a purpose of collection of data

andrew sullivan:looking at a single constituent system when talking about a distributed database is misleading

Marika Konings:but if access is part of the definition of processing, you could as part of the access discussion define additional purposes for processing (not for requiring collection, but for another part of data processing)?

Stephanie Perrin:This is one of several reasons why the interplay between the data protection regulation and the Charter is important. Same happens in all data protection regimes, interplay with constitutional protection is important, particularly in criminal matters.

Bradley Silver:+1 Steve - uncomfortable about moving on without agreement on whether something is a legitimate purpose for collection

Marika Konings:This is what the GDPR says: "The processing of personal data for purposes other than those for which the personal data were initially collected should be allowed only where the processing is compatible with the purposes for which the personal data were initially collected. In such a case, no legal basis separate from that which allowed the collection of the personal data is required. If the processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller, Union or Member State law may determine and specify the tasks and purposes for which the further processing should be regarded as compatible and lawful. Further processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes should be considered to be compatible lawful processing operations"

Stephanie Perrin:Thanks Marika, very helpful

Bradley Silver:"should be allowed only where the processing is compatible with the purposes for which the personal data were initially collected" - what does this mean - "compatible"?

Tapani Tarvainen:agree with Chuck re GDPR here

Rod Rasmussen:@Steve - if the data were to disappear as you suggest, I would be at the front of the line demanding it were collected regardless. I just don't think that's likely and I want to move this WG forward, as we could argue about this for a very long time.

Marika Konings:the GDPR notes that "the specific purposes for which personal data are processed should be explicit and legitimate and determined at the time of the collection of the personal data" so wouldn't that include both purposes for collection and access (and as such there is no primary / secondary purpose)?

Tapani Tarvainen:@Marika: yes, exactly.

Bradley Silver:Agree, @Marika.

Sam Lanfranco:It is impossible to make an exhaustive list of all the possible legitimate uses of collected data. Does it make any sense to simply say, X,Y,&Z are collected for the reasons Andrew lists, and then identify X & Y for public access in the public interest? This would at least give a generic reason to debate with regard to access to X & Y.

Tapani Tarvainen:in general, by default by GDPR data can only be used for purposes it's explicitly collected for, but there're exceptions

Marika Konings:GDPR seems to require purposes for processing (which includes amongst others collection and access) - not sure if it goes further than that....

Benny Samuelsen / Nordreg AB:sound dropping

andrew sullivan:The problem with this approach is that it will externalise the costs of non-operation of a site onto someone else, and that someone else won't be able to do anything about it

andrew sullivan:("this approach" == what John was just arguing)

John Bambenek:We give them Twitter...

andrew sullivan:I don't think Twitter is a fundamental part of the Internet infrastructure

andrew sullivan:though twitter.com is. And I can tell you from painful experience that, if twitter.com goes down, you had better be able to contact the operator of that infrastructure.

andrew sullivan:if @anvilwalrusden stops working, the story is different

steve metalitz:Yes, criteria for compatibility

Maxim Alzoba (FAITID):@Marika, what is the full question?

John Bambenek:I'd agree, but the idea that people as a whole are too stupid to be able to know what it means to make their phone number public flies in the face that far more sensitive stuff gets published online with other services.

andrew sullivan:I'm ok with a drafting team, but only if there's something to read well in advance of consideration of the output

Rod Rasmussen:Need to define this more rigorously and I agree with Andrew as well.

Michael Hammer:It depends how is on that team

Michael Hammer:who

steve metalitz:@Andrew we could start with Art. 6.4 and Recital 50 of GDPR

andrew sullivan:I mean I want to read the output of the team before we have to consider it in the next meeting

andrew sullivan:It's very hard to react in one of these meetings without having read the material

Nathalie Coupet:+1 @Andrew

steve metalitz:OK but I think it may take more than 1 week with just 3 people

steve metalitz:Glad to kick off discussoin

steve metalitz:Won;t be on call at alternate time

Sara Bockey 2:Need to drop. Thanks all

Nathalie Coupet:I won't be able to paticipate next week. Too late, can't think straight

Julie Bisland:@Nathalie and STEve, apologies are noted

Nathalie Coupet:Bye

andrew sullivan:bye

Maxim Alzoba (FAITID):bye all

Michael Hammer:I won't be able to participate next week.

Laura Margolis:bye! and thank you!

Julie Bisland:Michael, this is noted

Julie Bisland:(all noted apologies here--no need to send an email)