

**Adobe Connect: 28**

Alan Greenberg (ALAC)	James Bladel (RrSG)
Alan Woods (RySG)	Julf Helsingius (NCSG)
Alex Deacon (IPC)	Kavouss Arasteh (GAC)
Ashley Heineman (GAC)	Kristina Rosette (RySG)
Ayden Férdeline (NCSG)	Kurt Pritz (Chair)
Ben Butler (SSAC)	Leon Sanchez (ICANN Board Liaison)
Benedict Addis (SSAC)	Marc Anderson (RySG)
Chris Disspain (ICANN Board Liaison)	Margie Milam (BC)
Collin Kurre (NCSG Alternate)	Mark Svancarek (BC)
Diane Plaut (IPC)	Matt Serlin (RrSG)
Emily Taylor (RrSG)	Milton Mueller (NCSG)
Farzaneh Badii (NCSG)	Rafik Dammak (GNSO Council Liaison)
Georgios Tselentis (GAC)	Stephanie Perrin (NCSG)
Hadia Elminiawi (ALAC)	Thomas Rickert (ISPCP)

**On Audio Only:**

None

**Apologies:**

Amr Elsadr (NCSG)  
Esteban Lescano (ISPCP)

**Audio Cast (FOR ALTERNATES AND OBSERVERS)**

**Peak:** 17 joined

**View Only Adobe Connect:**

48 joined

**Staff:**

Daniel Halloran (ICANN Org Liaison – Legal)  
Trang Nguyen (ICANN Org Liaison – GDD)  
Mike Brennan  
Marika Konings  
Caitlin Tubergen  
Berry Cobb  
Terri Agnew  
Andrea Glandon

**AC Chat:**

Andrea Glandon: Welcome to the sixth EPDP Team Meeting held on Tuesday, 21 August 2018 at 13:00 UTC.

Terri Agnew: agenda wiki page (with slides): <https://community.icann.org/x/FxdpBQ>

Stephanie Perrin (NCSG): Hi Terri, all!

Rafik Dammak (GNSO Council Liaison): hi all

Leon Sanchez:Hello everyone  
Ayden Férdeline (NCSG):Hi all  
Thomas Rickert (ISPCP):Hi all!  
Julf Helsingius (NCSG):Hi  
alan Woods:hi all  
Chris Disspain (ICANN Board Liaison):Greetings  
Margie Milam (BC):Good morning!  
Kavouss Arasteh (GAC):Hi everybody  
Marika Konings:September, not August :-)  
Matt Serlin (RrSG):Fully supportive of what you had proposed yesterday Kurt  
Milton Mueller (NCSG):Please read it  
Mark Svancarek [BC]:In the dark and in the smoke here in Redmond  
Marika Konings:I believe that the best option is: Members are invited and will be provided travel support.If a member cannot attend in person, an alternate can attend and be provided travel support. If this is the case, the alternate should be designated to the Support Team as soon as possible. In example(2) above, if the absent member wished to participate remotely of a portion of the meeting, then she can do that and the alternate can only participate when the member is unavailable to participate.If an attending member is, in good faith, reasonably certain that s/he will be absent for a period of time where attendance by an alternate is desired, then:that member and the alternate can attend the full meeting but only one will be designated as a participant at any one timethe alternate will not be given travel support  
Milton Mueller (NCSG):I don't like #3  
Marika Konings:this is from Kurt's email. Note that the numbering for some reason has disappeared with the cut and paste. Sorry about that.  
Milton Mueller (NCSG):Either the member is there or the alternate is there, you can't have both  
Ayden Férdeline (NCSG):Fully agree w/ Milton  
alan Woods (RySG):RySG supports that suggestion Kurt.  
Collin Kurre (NCSG):Yes, I agree that allowing alternates and members to tag-team (particularly when only one is funded) unnecessarily complicates things  
Ayden Férdeline (NCSG):This is a manufactured issue designed to slow us down and to over-complicate things.  
Milton Mueller (NCSG):So we only get one of them at a time  
Milton Mueller (NCSG):Alternates can watch and stay up to speed  
Farzaneh Badii (NCSG):we are still discussing this? Kurt's first option in the email was appropriate.  
Mark Svancarek [BC]:gree  
Farzaneh Badii (NCSG):there is no disrespect, there is disrespect for the rule of the game.  
Ayden Férdeline (NCSG):Perhaps we can just take this to the list - keep the conversation there  
Milton Mueller (NCSG):It's obvious how it's upsetting the balance  
Farzaneh Badii (NCSG):We have a closed membership for EPDP for a reason.  
Julf Helsingius (NCSG):I think the GNSO drafting team was pretty clear about this.  
Alan Greenberg (ALAC):Sorry, line dropped.  
Ayden Férdeline (NCSG):That is not the intention Kavouss  
Julf Helsingius (NCSG):Kavouss: nobody is trying to exclude remote participants  
Milton Mueller (NCSG):Yes, people can participate remotely. That's kind of the point.  
Milton Mueller (NCSG):if you are participating GAC doesn't get another representative participating too , through  
Collin Kurre (NCSG):I think that one imbalance comes from resources available for travel. While governments or companies may have sufficient funding to send alternates to face to face meetings to

benefit from observing proceedings, syncing with team, etc., it puts other groups (chiefly civil society) at a disadvantage

Collin Kurre (NCSG):because they rely on ICANN travel funding

Matt Serlin (RrSG):agree with James and Ashley here...trust and adherence to the spirit of the rules

alan Woods (RySG):+1 James

Alex Deacon (IPC):+james (and ashley)

Farzaneh Badii (NCSG):it's astonishing how the meaning of "alternate" is not being acknowledged. it's not a matter of trust it's a matter of principle

Ashley Heineman (GAC):Ayden - who is proposing to disrespect the "game?"

Kristina Rosette (RySG):+1 James

Margie Milam (BC):agree with Ashley & James

Alan Greenberg (ALAC):Back now

Milton Mueller (NCSG):James if you want to move beyond this issue then agree with us and stick to the original rules regarding alternates and members

Milton Mueller (NCSG):It's the folks who are proposing to change the rules who are causing the delays, not us

Kavouss Arasteh (GAC):Due to peculiar and particulayr circumstances I formally abboince that I will remptely participate during the f2wf meeting irrespecttive whether or not the alternate attend or not.

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Alex Deacon (IPC):I don't see the logic of Ayden's argument.

Kavouss Arasteh (GAC):I have been pushed to the situatiopon as forcde majeur

Collin Kurre (NCSG):Maybe we can continue this discussion on the list to leave more room for substantive conversations?

Ashley Heineman (GAC):Nobody is advocating for additional speakers.

Ayden Férdeline (NCSG):What is unclear about the distinction between a member, alternate, and observer?

Farzaneh Badii (NCSG):I don't see the logic in wanting alternate to be in the room while the member is. what is an alternate in your mind?

Alex Deacon (IPC):+1 alan

Ayden Férdeline (NCSG):Alan, would you allow observers into the RDS2 RT that you chair?

Farzaneh Badii (NCSG):yes Alan personal benefit is to get those who have similiar opinions get what they want

Georgios Tselentis (GAC):Please allow flexible participation while respecting the balance set out in the ePDP specs. I support the suggestion in Kurt's email. +1 Alan

Ayden Férdeline (NCSG):\* RDS2 RT meetings

James Bladel (RrSG):@Milton - I don' tsee any effort to "stack" the meeting. In fact, I suspect some groups (including RrSG) won't have their full delegation present (members or alternates). But even if there's only one RrSG participant present, they'll still represent the view sof registrars, etc.

Kavouss Arasteh (GAC):Pls kindly do not mixed up my partiocular case with other cvases

Stephanie Perrin (NCSG):With great respect to all, there is not a lot of trust in this group. If there were, we would have had agreement on GDPR compliance a long time ago.

Farzaneh Badii (NCSG):it's about the rules of this group! it's a closed group it has members and alternates. alternates will attend in replace of members

Alex Deacon (IPC):@milton - question - were you cut of from the stream/read-only adobe?

Kavouss Arasteh (GAC):I atztend the f2f remotely and no one could exclude me

Farzaneh Badii (NCSG):they can watch the stream Alex

Stephanie Perrin (NCSG):This is indeed a question of principle. This is a fixed representation group. Do we invite extra members to the RDS REVIEW team? NO, we do not. There is one NCSG member there, and one Rr member there, and if they cannot make it there are no alternates allowed.

Stephanie Perrin (NCSG):I am very sorry to take up the time with administrative matters, but this is an important question of principle.

Farzaneh Badii (NCSG):no we are proposing a rule change if we want alternates be in the room at the same time as the members. if they are not gonna do anything and observe they can just do so watching the streaming.

Milton Mueller (NCSG):right

Ayden Férdeline (NCSG):I didn't hear that support

Margie Milam (BC):Too soon - we didnt prep for it as we didnt see the agenda until very late

Kavouss Arasteh:Who isx against my remote participation at the f2f meeting?

Ashley Heineman (GAC):Kavouss... nobody is against your remote participation. :-)

Kristina Rosette (RySG):@Kurt - I didn't have a chance to read the report you distributed this morning/late last night. If it differs from the previous version, would you please have a redline generated and distributed? That would be really helpful. Thank you.

Kavouss Arasteh (GAC) 2:pls be kind and confirm that I AS A MEMBER of tzh group hass tzh right to remotely participate due to visa entry problem that politically created for me

Ayden Férdeline (NCSG):Kavouss - no one has suggested you not participate remotely. of course you can

Kavouss Arasteh (GAC) 2:Kurt pls confirm my understanding

Milton Mueller (NCSG):Yes, Kavouss you have right to full participation. But when you are participating your alternate cannot

Kavouss Arasteh (GAC) 2:That is not my business

Kurt Pritz:Hi Kavouss - of course you will be able to attend remotely

Berry Cobb:Note, column 4 did show ISPCP's summary of "No" support from their survey input.

Benedict Addis (SSAC):What is 'severability' ?

Thomas Rickert (ISPCP):Berry - sorry - my bad.

Emily Taylor (RrSG):@benedict - i'ts legal boilerplate to allow any bits of the contract that are subsequently found unlawful to be taken out (severed) from the contract without the entire contract falling away

Chris Disspain (ICANN Board Liaison):Kurt, there is a board meeting tonight

Chris Disspain (ICANN Board Liaison):no changes are on the agenda

Stephanie Perrin (NCSG):Severability raises interesting questions when there is prefatory language that could be ruled unlawful in a court judgement...such as, for instance, maintaining the public directory to the maximum extent possible.

James Bladel (RrSG):@Emily - and given the uncertainties around this, we can't risk tying the RAA/RA to any provision thats on thin ground

Chris Disspain (ICANN Board Liaison):the use of the term dynamic and ICANN board does not compute

Leon Sanchez (ICANN Board Liaison)::P

Milton Mueller (NCSG):That's funny but in fact the Board can call a meeting at any time and make any changes it wants.

Emily Taylor (RrSG):@James Agree of course. Was answering a specific query from Benedict.

Kavouss Arasteh (GAC) 2:Alan+1

Margie Milam (BC):+1 alan

Alex Deacon (IPC):+1 Alan I read it the same way. (IANAL)

James Bladel (RrSG):Yep. Just reinforcing your point on why this is so important to include.

Milton Mueller (NCSG):Agree with Alan

Kavouss Arasteh (GAC) 2:I said exactly that it is within the remit of the Board to change the ATemp Spect but EPDP does not have the authority to propose changes while in examining the case

Leon Sanchez (ICANN Board Liaison):I will need to leave the AC room now but I will continue following the meeting over the phone bridge.

Diane Plaut (IPC):Alan I read it the same way as well from a legal perspective

Hadia Elminiawi - ALAC:8.3 could actually be considered as a necessary clause -

Milton Mueller (NCSG):The Conflicts of Law procedure is a no-op. Everyone knows this

Stephanie Perrin (NCSG):This consensus policy can nullify the WHOIS conflicts with law. It is a stretch to call that procedure the result of a consensus policy.

Kurt Pritz:@Milton: What is "no-op"

Milton Mueller (NCSG):it doesn't do anything. It doesn't work

Stephanie Perrin (NCSG):Non-operable. Does not work. Dead Parrot.

Milton Mueller (NCSG):LOL dead parrot

Stephanie Perrin (NCSG):Pining for the fiords, it is.

Kurt Pritz:nailed to the perch

Marika Konings:@Stephanie - the original procedure is the result of a PDP and as such a consensus policy.

Milton Mueller (NCSG):Whether or not it is a consensus policy, it is a no-op

Farzaneh Badii (NCSG):Google doesn't work today Kurt? ;)

Margie Milam (BC):changing the Conflicts of Law procedure is not part of this charter

Margie Milam (BC):and would need a separate PDP

Marika Konings:note that the Council did agree to form an Implementation Advisory Group to review the implementation of the policy but that has been put on hold noting the current workload.

Stephanie Perrin (NCSG):I have searched in vain for the consensus procedure that hatched that Marika, if you have the reference that would be useful.

Marika Konings:@Stephanie - I will send it to you after the meeting.

Stephanie Perrin (NCSG):Council voted that we needed a procedure. then staff drafted something

Alex Deacon (IPC):@Marika - can you please send that email to the full list? I would be helpful for all IMO.

Marika Konings:Yes, no problem.

Stephanie Perrin (NCSG):makes sense

Stephanie Perrin (NCSG):Makes sense Thomas that is. WHOIS conflicts still makes no sense.....:-)

Thomas Rickert (ISPCP):Happy to help, Kurt!

Emily Taylor (RrSG):Very happy to work on this with Thomas

Thomas Rickert (ISPCP):Let's not forget, if there is a joint controller situation and you do not have a written agreement on this, that is subject to sanctions.

Thomas Rickert (ISPCP):Great, Emily. Let's touch base offline.

Emily Taylor (RrSG):Sure

James Bladel (RrSG):+1 Emily. Other countries, plus California. We should try to be generic in our language, even if they're mostly GDPR equivalent

Ashley Heineman (GAC):"Performance of a Contract" is already listed as a legal basis. The GAC is just noting that the row specific to "Public RDDS/WHOIS" needs to show specifically as a "Performance of a Contract" as this must be done and the publically available WHOIS is not based on legitimate interest.

Stephanie Perrin (NCSG):We should be here to ensure compliance with law.....data protection law. NOT just avoidance of fines.

Farzaneh Badii (NCSG):I don't mind not be GDPR specific but privacy standards we adhere to has to be in line with GDPR which can cover compliance with other laws

Hadia Elminiawi - ALAC:Alex can you please speak louder

James Bladel (RrSG):um...dotAmsterdam? How did that turn out?

James Bladel (RrSG):And I always thought that was as "procedure" not a Consensus Policy.

Marika Konings:Just a clarification, the conflicts with local law is a procedure, not a policy which was the implementation of recommendations coming out of a GNSO PDP.

Stephanie Perrin (NCSG):Not to harp on standards, but the Art 29 committee sent an interesting letter back in April....asking for free publication of ISO standard 17065/2012

Marika Konings:Correct James.

Marika Konings:I may have mistated that previously in the chat.

Kavouss Arasteh (GAC) 2:not necessariolty covers the compliance of other laws. what other laws you are referring ?

Stephanie Perrin (NCSG):Standards are very helpful in establishing what best management practices are, in the absence of international harmonization of laws...

Alex Deacon (IPC):[https://urldefense.proofpoint.com/v2/url?u=https-3A\\_www.icann.org\\_resources\\_pages\\_whois-2Dprivacy-2Dconflicts-2Dprocedure-2D2008-2D01-2D17-2Den&d=DwIFaQ&c=FmY1u3PjP6wrcrwlI3mSVzgfkbPSS6sJms7xcl4I5cM&r=k7uKdjSb7\\_ZjItyVqrCYHo\\_rKms9SFxImbYEJqG-y9I&m=t1UnfMvlt6OPXv5c762EPZ8bbn1r00dRmS8L9A0Qm3o&s=8dupGSP3hb0h-e5RoZzajjF3KMyqqRQDLYK0dVxGIJ4&e=](https://urldefense.proofpoint.com/v2/url?u=https-3A_www.icann.org_resources_pages_whois-2Dprivacy-2Dconflicts-2Dprocedure-2D2008-2D01-2D17-2Den&d=DwIFaQ&c=FmY1u3PjP6wrcrwlI3mSVzgfkbPSS6sJms7xcl4I5cM&r=k7uKdjSb7_ZjItyVqrCYHo_rKms9SFxImbYEJqG-y9I&m=t1UnfMvlt6OPXv5c762EPZ8bbn1r00dRmS8L9A0Qm3o&s=8dupGSP3hb0h-e5RoZzajjF3KMyqqRQDLYK0dVxGIJ4&e=)

Emily Taylor (RrSG):@Milton - did the conflict of laws policy come into play in relation to data retention obligations (following CJEU's judgment that eliminated the data retention directive?)

Alex Deacon (IPC):In May 2006, the ICANN Board [4] adopted the policy and directed ICANN staff to develop and publicly document a conflicts procedure.

Thomas Rickert (ISPCP):It is a strange concept to force contracted parties to ask ICANN for permission to comply with applicable laws. I worked on several data retention waiver requests for clients and it was a very lengthy process to say the least. there was a lot of resistance from ICANN Org and I think it is not appropriate that contracted parties need to put a lot resources into allowing for them to operate legally.

Mark Svancarek [BC]:For reference: [https://urldefense.proofpoint.com/v2/url?u=https-3A\\_www.icann.org\\_resources\\_pages\\_whois-2Dprivacy-2Dconflicts-2Dprocedure-2D2008-2D01-2D17-2Den&d=DwIFaQ&c=FmY1u3PjP6wrcrwlI3mSVzgfkbPSS6sJms7xcl4I5cM&r=k7uKdjSb7\\_ZjItyVqrCYHo\\_rKms9SFxImbYEJqG-y9I&m=t1UnfMvlt6OPXv5c762EPZ8bbn1r00dRmS8L9A0Qm3o&s=8dupGSP3hb0h-e5RoZzajjF3KMyqqRQDLYK0dVxGIJ4&e=](https://urldefense.proofpoint.com/v2/url?u=https-3A_www.icann.org_resources_pages_whois-2Dprivacy-2Dconflicts-2Dprocedure-2D2008-2D01-2D17-2Den&d=DwIFaQ&c=FmY1u3PjP6wrcrwlI3mSVzgfkbPSS6sJms7xcl4I5cM&r=k7uKdjSb7_ZjItyVqrCYHo_rKms9SFxImbYEJqG-y9I&m=t1UnfMvlt6OPXv5c762EPZ8bbn1r00dRmS8L9A0Qm3o&s=8dupGSP3hb0h-e5RoZzajjF3KMyqqRQDLYK0dVxGIJ4&e=)

Kavouss Arasteh (GAC) 2:why not thomas?

Mark Svancarek [BC]:In May 2006, the ICANN Board [4] adopted the policy and directed ICANN staff to develop and publicly document a conflicts procedure.

Stephanie Perrin (NCSG):The discussion on revisiting the procedure still ranks as the most ridiculous committee I ever participated in....and that covers 30 years in government, says a lot....

Thomas Rickert (ISPCP):...and that is the reason why I think a policy is the preferred option.

Marika Konings:As noted before, the GNSO Council has already agreed to commence a review of the procedure following input that was received on the effectiveness of the procedure.

Stephanie Perrin (NCSG):who is talking?

Hadia Elminiawi - ALAC:+1 Thomas policy is the preferred option

Stephanie Perrin (NCSG):we cannot seem to get it to go away

Stephanie Perrin (NCSG):Canadian companies have not invoked it. Therefore, they are not in compliance with the law.

Milton Mueller (NCSG):exactly James

Thomas Rickert (ISPCP):@Kavouss, ICANN cannot require contracted parties to breach applicable laws. Therefore, a procedure requiring contracted parties to write applications and incur legal fees is not appropriate. Also, just imagine we had hundreds of applications that need to be assessed by ICANN,

negotiated back and forth (as ICANN typically does) and published for public comment requires a lot of resources for all sides that should be avoided by using the tool of a policy to allow for compliance.

Emily Taylor (RrSG):Yes, agree with James @Thomas - it's about having a way to avoid ICANN taking compliance action in relation to contractual obligations which make the contracted party in breach of applicable laws

alan Woods (RySG):+1 james and Emily & Thomas

Stephanie Perrin (NCSG):They cannot in Canada invoke it without going to federal court....requires a complaint and a letter of resolution from the Privacy Commissioner. Total nonsense, and a waste of Court time.

Diane Plaut (IPC):It shows connected I will call in

Terri Agnew:@Diane, please let me know if a dial out on the telephone is needed

Stephanie Perrin (NCSG):I cannot believe we are wasting time on this issue. the clock is ticking folks, we are going to be living with the temp spec forever.

Diane Plaut (IPC):Terri do you see me by audio now?

Terri Agnew:@Diane, I do

James Bladel (RrSG):Stephanie - forever? It turns in to a pumpkin next May....

Ayden Férdeline (NCSG):As of 1 October 2017, the procedure had never been invoked. Cannot find anything more recent on the ICANN website.

Milton Mueller (NCSG):when Margie and I agree we probably should go with it ;-)

Stephanie Perrin (NCSG):Yes I know....but we are losing the chance to improve it. Does not meet legal obligations at the moment in my view....

Thomas Rickert (ISPCP):@Emily and James: I agree it is meant to be a way for ICANN to avoid compliance action. It was meant to be an easy to use and low threshold way to achieve that. Experience shows that exactly that is not the case.

Stephanie Perrin (NCSG):So we are losing the opportunity to come up with a consensus policy that complies with data protection law. Working on the conflicts with law procedure does not achieve that goal.

Thomas Rickert (ISPCP):I agree, Stephanie.

James Bladel (RrSG):Yes, but the previous IAGs weren't able to wrestle this issue very well, so I don't think the next one will rescue us.

Stephanie Perrin (NCSG):Thanks Thomas, I was starting to feel like ALice in Wonderland.

Mark Svancarek [BC]:@Stephanie "starting"?

Milton Mueller (NCSG):But I hope no one is suggesting that we can end this ePDP because we already have the conflict with laws procedure.

Thomas Rickert (ISPCP):IMHO we should put the conflicts with local laws procedure aside

Matt Serlin (RrSG):+1 Thomas

Thomas Rickert (ISPCP):It is not the right tool for what we are trying to achive here

Milton Mueller (NCSG):Yes in a dark corner of the attic

Farzaneh Badii (NCSG):+1 Thomas

Thomas Rickert (ISPCP):And I have to think hard to find cases where it is the right tool :-)

Kavouss Arasteh (GAC):Mariaka suggestion +1

Alex Deacon (IPC):FWIW In all, 15 requests to waive the Data Retention Specification in the 2013 RAA have been submitted by registrars, all from within the European Union.

Mark Svancarek [BC]:I did not hear anyone suggesting that the ePDP can end because we have a conflicts of law procedure

alan Woods (RySG):To be optimistic, were we to succeed in stating the policy at the approparite level, the Conflict with law procedure would be very much the exception than a front and centre necessity!

Stephanie Perrin (NCSG): I think it deserves a decent burial. Not just consignment to the attic. We need to be very clear that exemptions from the retention spec are separate and different.

Kavouss Arasteh (GAC): Kurt, pls rememberr that we have asked a clear dedfinition for legitmate purposde and ldegitimate interest which are tstwo fundamerntal issue to be addressed

Farzaneh Badii (NCSG): I agree with burial.

Alex Deacon (IPC): @stephanie - perhaps - but this EPDP isn't the funeral committee.

Kavouss Arasteh (GAC): Alex+1

Mark Svancarek [BC]: I'm fine with revising the thing as part of the ePDP, should the charter be interpreted to allow it. But I don't think we can disregard existing policies and procedures simply because they are non optimal.

Stephanie Perrin (NCSG): Mark, there is non-optimal, and then there is total abrogation of data protection law and the European Charter of Fundamental Rights. I think we are in the latter category, as far as the Conflicts procedure is concerned. However, we are beating a dead horse here.

Alan Greenberg (ALAC): Dead air

Kavouss Arasteh (GAC): When it is referred to " Appropriate Measurdes" what are those measures such as what

James Bladel (RrSG): Bueller?

Milton Mueller (NCSG): Mark, no one thinks we can or should revise the conflict of laws procedure in this ePDP. I think we are saying let's solve the problems that led to the temp spec first, and let GNSO fix or modify the other procedure later

Hadia Elminiawi - ALAC: + 1 stephanie exemption from the temp spec should be different

Farzaneh Badii (NCSG): I think the answer to Q3 is yes ... but I will wait for the other distinguished to weigh in

Alex Deacon (IPC): @kurt - what section are we discussing?

Kurt Pritz: Section 2 and section 3.1

Collin Kurre (NCSG): Alex that's of Appendix C

Thomas Rickert (ISPCP): +1 to Alan

Thomas Rickert (ISPCP): Code of Conduct is the way to go, but not easily achieved. However, if we want to bend what is possible under GDPR, we should get that approval via a CoC

alan Woods (RySG): agreed thomas... it is , a huge undertaking, but it is the ultimate goal IMHO

Ashley Heineman (GAC): I thought discussion of code of conduct was part of the UAM. Happy to discuss here, but just checking.

Thomas Rickert (ISPCP): @Ashley, correct. We would need it there, too.

Thomas Rickert (ISPCP): Ideally, we would have an all-emcompassing CoC.

Thomas Rickert (ISPCP): encompassing

Stephanie Perrin (NCSG): I am mystified about the constant reference to guidance from the EDPB. So far in the letters I have seen very little advice except "get on with it" and "read our previous correspondence". I have asked for the staff notes on conversations and lobbying excursions, so that we can see what "advice" the EDPB has provided Goran and other senior staff. I don't want to put in a data access request, but the most recent missive refers to advice again. What advice are we expecting to get from them on these details, it is my understanding that we will have to work out these details ourselves, and soon

Benedict Addis (SSAC): +1

Kavouss Arasteh (GAC): unless we define or describe what are the legitimate interest or what is the legitimate purpose it would be difficult to proceed further

Ashley Heineman (GAC): "not confusing" doesn't mean do not articulate.

James Bladel (RrSG): Legitimate Interests / Purposes = Here There Be Dragons.

alan Woods (RySG):hence why referring specifically to the Art 40 procedure stephanie .. whereby we are invoking an actual process, as opposed to asking them to give advice, for no stated reason.

Alex Deacon (IPC):@milton - parties other than LEA's can have a legitimate interest.

Kavouss Arasteh (GAC):Moreover, who established the code of conduct what are they where we can find them to apply or if is not applied take necessary measure to remedy them or counter them

James Bladel (RrSG):More precisely - Contracted Parties will atioanlly do only what they believe ICANN can enforce.

Milton Mueller (NCSG):ICANN contracts are only there to fulfill ICANN's mission, and ICANN's mission is not the same as the interests of third parties, legitimate or not

Thomas Rickert (ISPCP):@Kavouss - in my view, we would present the outcome of our very discussion and transform that into a CoC.

Ashley Heineman (GAC):Read the last DPA response to ICANN. They expect a system to accomodate the interests of users. Hard to do that without articulating legitimate interests.

Kavouss Arasteh (GAC):thanks Thomas

Hadia Elminiawi - ALAC:I don't think that the registrars should continue in deciding whether there is a leagl interest or not - the policy should attempt to identify legitimate interest

Thomas Rickert (ISPCP):You are most welcome, Kavouss

Margie Milam (BC):+ 1 Ashley

Milton Mueller (NCSG):That is not a correct interpretation of ICANN's mission

Stephanie Perrin (NCSG):I have long been advocating for binding voluntary codes. Asking for a section 40 determination will put ICANN's remit under scrutiny vis a vis the Charter, in my view. So far we are not ready for this.. I believe in miracles, but not in the next two months are we going square ICANN's remit with constitutional protections for individuals....

Hadia Elminiawi - ALAC: I don't think that the registrars should continue in deciding whether there is a legitimate interest or not - the policy should attempt to identify legitimate interest

alan Woods (RySG):oh ... zero argument here Stephanie

Ashley Heineman (GAC):It is mine and many others interpretation of ICANN's mission and is represented in the words of the mission.

Benedict Addis (SSAC):@Hadia legitimate interest is one of six purposes. It falls to the processor (which includes the registrar) to determine.

Benedict Addis (SSAC):(IANAL!)

Milton Mueller (NCSG):EDPB

Hadia Elminiawi - ALAC:@Benedict the regsitrar should have some guidance

Benedict Addis (SSAC):Yes, agreed

Ashley Heineman (GAC):Compromise... yes, compromise.

Thomas Rickert (ISPCP):We should not discuss access now

Thomas Rickert (ISPCP):that is for later.

Stephanie Perrin (NCSG):With respect to all, I refer you to the letters from Art 29 Chair Jacob Kohnstamm.....ICANN was not set up to be a repository of personal information to assist law enforcement and other actors.

Thomas Rickert (ISPCP):There is so much to discuss before we get there

alan Woods (RySG):agreed... +1 thomas

Thomas Rickert (ISPCP):What about collection?

Thomas Rickert (ISPCP):What to collect, what to pass on between Rrs and Rys

Kavouss Arasteh (GAC):Milton \_1

Thomas Rickert (ISPCP):How long to retain and what to publicise?

Stephanie Perrin (NCSG):Or if it was (and I cannot argue with that proposition) it has now been shown to violate law, and requires a massive restructuring.

Kavouss Arasteh (GAC):Disagree with Milton  
Hadia Elminiawi - ALAC:I disagree with Milton too  
Kavouss Arasteh (GAC):several times the terms "legitimate interest" or "legitimate purpose" were referred to in the Temp Spoc. and somebody says leave to ICANN to define that based on its mission.  
Kavouss Arasteh (GAC):That is a big mistake  
Collin Kurre (NCSG):^ Agree, Kavouss  
Milton Mueller (NCSG):Actually Kavouss you are agreeing with me  
Ayden Férdeline (NCSG):@Hadia, I am curious, what are you disagreeing with?  
Kavouss Arasteh (GAC):Pls refer me to the ICANN Mission from which I could derive the legitimate interest and/ or legitimate purpose which authorize to collect data and made it publicly available  
Ashley Heineman (GAC):Kavouss, please see GAC advice on this issue.  
Hadia Elminiawi - ALAC:@Ayden I believe that ICANN should have a say in deciding on the legitimate interest - we need to have some sort of guidance there  
Milton Mueller (NCSG):Hadia surely you agree that if ICANN's decisions are deemed to break privacy law then its decisions will be overridden  
Ayden Férdeline (NCSG):thanks for clarifying @Hadia  
Stephanie Perrin (NCSG):Kavouss, please see the letters from the Data Protection Authorities over the past 18 years on this. I can send you a convenient list....but they are all on the old RDS working group workspace.  
Milton Mueller (NCSG):Kavouss: here is the mission: [https://urldefense.proofpoint.com/v2/url?u=https-3A\\_www.icann.org\\_resources\\_pages\\_governance\\_bylaws-2Den-23article1&d=DwlFaQ&c=FmY1u3Pjp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=k7uKdjSb7\\_ZjItyVqrCYHo\\_rKms9SFxImbYEJqG-y9I&m=t1UnfMvlt6OPXv5c762EPZ8bbn1r00dRmS8L9A0Qm3o&s=sg7EaZj6Ua8d7E6p8oN0j\\_xUw\\_a3wYqjnuOKrqTMpoM&e=](https://urldefense.proofpoint.com/v2/url?u=https-3A_www.icann.org_resources_pages_governance_bylaws-2Den-23article1&d=DwlFaQ&c=FmY1u3Pjp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=k7uKdjSb7_ZjItyVqrCYHo_rKms9SFxImbYEJqG-y9I&m=t1UnfMvlt6OPXv5c762EPZ8bbn1r00dRmS8L9A0Qm3o&s=sg7EaZj6Ua8d7E6p8oN0j_xUw_a3wYqjnuOKrqTMpoM&e=)  
Kavouss Arasteh (GAC):This is different from GAC advice  
Hadia Elminiawi - ALAC:@Milton sure  
Milton Mueller (NCSG):ok then you don't disagree with me  
Kavouss Arasteh (GAC):Ashley, the issue of legitimate interest or legitimate purpose based on which the personal data may be collected, and made publicly available or transferred is much beyond the notion of GAC Advice  
Ashley Heineman (GAC):Kavouss, let's take this offline please.  
Kavouss Arasteh (GAC):Agreed  
Hadia Elminiawi - ALAC:NO Milton we are not in agreement - you say that ICANN should not decide on the legitimate interest while I say ICANN should make such decisions to be a sort of guidance to whoever is going to disclose the data, assuming that ICANN will make decisions that agree with the law is another matter  
Hadia Elminiawi - ALAC:I meant ICANN ICANN will make decisions that disagree with the law is another matter  
Milton Mueller (NCSG):The ultimate arbiter of legitimate interest will be privacy law, not ICANN  
Milton Mueller (NCSG):You can't really disagree with that. Or you can, if you want ICANN to be sued  
Collin Kurre (NCSG):Hadia - But it's not simple guidance if the distinction is used as the basis for an access framework, no?  
Kavouss Arasteh (GAC):Kurt; pls devote a few minutes to the subject that you intend to bring up on Thursday.  
Kavouss Arasteh (GAC):devote

Hadia Elminiawi - ALAC:Yes Milton and this is why we should make sure that the definition is inline with the privacy law

Kavouss Arasteh (GAC):Which law you are referring Thomas pls ?

Thomas Rickert (ISPCP):I have spoken to the implications of GDPR, Kavouss.

Stephanie Perrin (NCSG):It will not be quick though folks. Binding corporate rules have taken a long time to finalize, there are no grounds for optimism about this process being expedited.

Milton Mueller (NCSG):LOL

Farzaneh Badii (NCSG):you never know Kurt :)

Milton Mueller (NCSG):he is a man for all seasons

Thomas Rickert (ISPCP):-)

Hadia Elminiawi - ALAC:@Collin sure it will ultimately be more than guidance - but nothing is wrong with that if it follows the privacy laws

Benedict Addis (SSAC):@Thomas legal basis for disclosure to law enforcement is covered by Article 32 Budapest Convention on Cybercrime: "A Party may, without the authorisation of another Party: a) access publicly available (open source) stored computer data, regardless of where the data is located geographically; or b) access or receive, through a computer system in its territory, stored computer data located in another Party, if the Party obtains the lawful and voluntary consent of the person who has the lawful authority to disclose the data to the Party through that computer system."

Benedict Addis (SSAC):Only applies to ~60 signatory countries though :-s

Kavouss Arasteh (GAC):Budapest Convention has not been ratified by several countries

Thomas Rickert (ISPCP):Thanks, Benedict. Let's discuss this when we get there...

Benedict Addis (SSAC):Yep! Beer on me :)

Thomas Rickert (ISPCP):Looking forward to it, Benedict!

Diane Plaut (IPC):It is not illegal to have access, Milton. This Temp Spec is meant to interpret the GDPR and apply it. Access is permitted based on legitimate interests and it has been clearly identified in the GDPR which is privacy regulation (as laid out in the Temp Spec), which provides the basis of the legitimate interest. Yes, compromise needs to be made but recognizing the valid basis of collecting and processing within needed and identified scope of designated third parties. To Margie's point, there are nuances that need to be defined within the EPDP to clearly identify the structure of reasonable access.

Chris Disspain (ICANN Board Liaison):Did someone mention beer?

Ashley Heineman (GAC):Chris woke up

Chris Disspain (ICANN Board Liaison):HA!

Thomas Rickert (ISPCP):Ashley, I had typed exactly that... Great minds...

Kavouss Arasteh (GAC):Alcohol free Beer

Collin Kurre (NCSG):Thanks for invoking RDAP! important tech development that we shouldn't silo from this conversation

Alan Greenberg (ALAC):Beer doesn't wake up Chris. It's wine we need.

Benedict Addis (SSAC):Yes Kavouss

Chris Disspain (ICANN Board Liaison):As you both know, it's wine with me not beer

Thomas Rickert (ISPCP):You are being cruel, Kavouss :-)

Thomas Rickert (ISPCP):being

Farzaneh Badii (NCSG):they don't sell alcohol free beer where Benedict goes. it's illegal and against morality

Chris Disspain (ICANN Board Liaison):Farzaneh + 1

Collin Kurre (NCSG):Can tell we're nearing the 2-hour mark when everyone starts talking about beer...

Chris Disspain (ICANN Board Liaison):or wine

Chris Disspain (ICANN Board Liaison):Or both

Milton Mueller (NCSG):gin?

Chris Disspain (ICANN Board Liaison):WFM

Kavouss Arasteh (GAC):hihihi

Alex Deacon (IPC):+1 MarkSV

Ayden Férdeline (NCSG):While of course the policy should at a minimum be compliant with the GDPR, good luck distinguishing between a natural and legal person...

Kavouss Arasteh (GAC):Some people sees to be emmotional to what I SAY

Chris Disspain (ICANN Board Liaison)::-

Alex Deacon (IPC):On the concept of reasonsable access the temp spec says " "Registrar and Registry Operator MUST provide reasonable access to Personal Data in Registration Data to third parties on the basis of a legitimate interests pursued by the third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the Registered Name Holder or data subject pursuant to Article 6(1)(f) GDPR."

Stephanie Perrin (NCSG):Not to be serious or anything, but reasonable access does not mean "unified" or "uniform" access model. Retaining the concept of a WHOIS with a few more data elements redacted is not reasonable access, it is a published directory. Publishing a directory is no longer necessary, given the capability of RDAP to provide reasonable access on demand, tailored to proven need.

Alex Deacon (IPC):Also not that "reasonable" is an objective legal standard. (i.e. what a reasonable person would find appropriate under the circumstances)

Alex Deacon (IPC):\*also note

Thomas Rickert (ISPCP):Alex, that part of the Temp Spec is flawed as it omits that disclosures can take place based on 6 I b and c in some cases, too. Therefore, we need to go through all those cases one by one and craft the language accordingly.

Chris Disspain (ICANN Board Liaison):Sadly Alex I suspect that the common law meaning of 'reasonable' is trumped (so to speak) by the law or regulations around it

Farzaneh Badii (NCSG):I agree with Thomas.

Stephanie Perrin (NCSG):"Trumped" is an unfortunate term, but the concept is fundamental to the problems I see with a "uniform" model. Life is not easy, this will take some work....

Mark Svancarek [BC]:Here is an example why I don't agree with the existing redacted list: Microsoft Corporation, a US entity, wants to have its entire thick data set published, and that is currently not allowed.

Benedict Addis (SSAC):@Ayden "While of course the policy should at a minimum be compliant with the GDPR, good luck distinguishing between a natural and legal person..." <-- Perhaps registrars could ask for a declaration at time of domain registration? Nominet does it here in .uk.

Stephanie Perrin (NCSG):I agree Mark that this should be accommodated where possible.

Mark Svancarek [BC]:@Benedict - exactly. Force a declaration.

Stephanie Perrin (NCSG):How is the question

Chris Disspain (ICANN Board Liaison):as do a nuber of othe ccTLDs Benedict

James Bladel (RrSG):@Mark - Most registrars offer an "opt-in" to WHOIS (or an "opt-out" of redaction)

Matt Serlin (RrSG):@Mark you should absolutely be able to publish full WHOIS info

Mark Svancarek [BC]:@James - agree. But per Temp Spec that opt-in seems ambiguous.

James Bladel (RrSG):@Benedict - I've always wanted some stronger declaration on natural person vs. org. But registrants aren't reliable in providing this, and we still have the issue of 130M plus legacy records....

James Bladel (RrSG):So maybe an option for going-forward

Mark Svancarek [BC]:Going forward would be progress

Benedict Addis (SSAC):@James Good to hear. I thought you'd be vehemently opposed.

Emily Taylor (RrSG):+1 to that discussion - going forward could be worth exploring as the records will flush through renewals within a few years

Benedict Addis (SSAC):+1 Emily

Benedict Addis (SSAC):Av domain lifespan is what 1.5 years?

Emily Taylor (RrSG):But this would be a declaration from the registrant that it could be reasonable for contracted parties to rely on

James Bladel (RrSG):@Benedict - we redact universally because the information is ambiguous. Many registrants enter data in the "ORG" field that is aspirational, rather than a reality. If we can get this to actually work, then Registrars would be more confident making this distinction.

Alex Deacon (IPC):+1 to the "going forward" topic - encouraging.

Thomas Rickert (ISPCP):I guess the issue with natural vs legal is risk. If the EDPB confirms that a distinction based on a self-identification by registrants is ok, that could be a way forward.

James Bladel (RrSG):Correct, Thomas

Benedict Addis (SSAC):Informed consent crucial here I guess

Thomas Rickert (ISPCP):This is why an exchange with them would be great. And it could be a point for the CoC

alan Woods (RySG):as long as there are certain ways of dealing with all the issues re consent!

Leon Sanchez:Thanks everyone

Matt Serlin (RrSG):thanks all

Collin Kurre (NCSG):thanks all, see you thurs

Emily Taylor (RrSG):and thank YOU Kurt!

Ayden Férdeline (NCSG):thanks all

James Bladel (RrSG):Bye all

Rafik Dammak (GNSO Council Liaison):bye all

Leon Sanchez:Have a great day everyone

alan Woods (RySG):thanks all!

Benedict Addis (SSAC):Bye all

Hadia Elminiawi - ALAC:Thank you all, bye

Georgios Tselentis (GAC):thanks and bye

Julf Helsingius (NCSG):Thank you all

Kristina Rosette (RySG):thanks, everyone

Thomas Rickert (ISPCP):Thanks Kurt and staff! Great job.

Farzaneh Badii (NCSG):bye all