

Adobe Connect: 26

Alan Woods (RYSG)	Julf Helsingius (NCSG)
Alex Deacon (IPC)	Kavouss Arasteh (GAC)
Amr Elsadr (NCSG)	Kristina Rosette (RySG)
Ashley Heineman (GAC)	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)
Chris Lewis-Evans (GAC Alternate)	Mark Svancarek (BC)
Diane Plaut (IPC)	Matt Serlin (RrSG)
Farzaneh Badii (NCSG)	Rafik Dammak (GNSO Council Liaison)
Georgios Tselentis (GAC)	Stephanie Perrin (NCSG)
Hadia Elminiawi (ALAC)	Tatiana Tropina (NCSG Alternate)
James Bladel (RrSG)	Thomas Rickert (ISPCP)

Guests:

Becky Burr (ICANN Board)
Gina Bartlett (CBI)

On Audio Only:

None

Apologies:

Ayden Férdeline (NCSG)
Emily Taylor (RrSG)

Audio Cast (FOR ALTERNATES AND OBSERVERS)

Peak: 6 joined

View Only Adobe Connect:

17 joined

Staff:

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

AC Chat:

Andrea Glandon:Welcome to the GDPR Q&A session with the GNSO Temp Spec gTLD RD EPDP held on Wednesday, 19 September 2018 at 13:00 UTC.

James Bladel:Good morning all. Hi Becky!

Leon Sanchez:Hello everyone!

Becky Burr:good morning all!

Tatiana Tropina (NCSG):Hi all!

Thomas Rickert (ISPCP):Hi all°

Farzaneh Badii (NCSG):Hi everyone

Georgios Tselentis (GAC):Hi everybody. @Kurt: since this is information session why not allow alternates to participate in the room? Is there any objection from the group?

Thomas Rickert (ISPCP):On Art. 6 I e GDPR (public interest) - has ICANN been officially vested with a public function?

Marika Konings:@George - the AC view only room is available for alternates and anyone else interested.

Amina Ramallan:Hello. Please I need a link to the slides. Thanks

Stephanie Perrin (NCSG):That was a rhetorical question Thomas, right? :-)

Kurt Pritz:@Georgios You are right - all alternates should be able to attend. At this stage, the alternates can attend in the view only room. I hope and think this should be adequate

mark svancarek (BC):To what extent does the endorsement of GAC represent a vesting of public function?

alan Woods (RYSG):+1 Thomas

Julf Helsingius (NCSG):benedict - your mic is open

James Bladel (RrSG):Please mute...echo

Stephanie Perrin (NCSG):I think we should allow everyone to ask questions. we need to expand the knowledge base to make progress on the EPDP

Stephanie Perrin (NCSG):Mark....not at all is the answer to your question.

alan Woods (RYSG):@ marc i would refer you to Art 6(3) and that should answer your question.

Marc Anderson (RySG):Here is the link to the Q&A google

doc: https://urldefense.proofpoint.com/v2/url?u=https-3A_docs.google.com_document_d_1QBy9YhdoaQ2yBmPicUSJai9YaNPZWrrYwFJVJIAF-5FM_s_edit&d=DwIFaQ&c=FmY1u3PJp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=k7uKdJsb7_ZjItyVqrCYH_o_rKms9SFxlmbYEJqG-y9I&m=P1b0INGXHp5P4zO-t2wRdVJlx3teOzf8broCpM-kvkU&s=8Fa38CulyJqYf3dwAxxHmsSeZeQILNgD8DTw13ekJpo&e=

alan Woods (RYSG):apologies not @marc ... @Mark ..

Thomas Rickert (ISPCP):Mark - I think there is no legal act. Endorsement is not sufficient, but maybe our GAC friends can have that checked and find ways to confirm this.

Thomas Rickert (ISPCP):In the absence of that, I think we cannot rely on Art. 6 I e GDPR.

mark svancarek (BC):thanks Stephanie Alan Thomas

Marika Konings:If there are any alternates that would like to join this session and ask questions, please advise them to log into this room. The AC view only room will also remain available for those that just want to listen.

Amr Elsadr (NCSG):My understanding is that the GAC are meant to provide the ICANN BoD with Advice on when ICANN policies intersect with public policy issues, not the public interest.

Stephanie Perrin (NCSG):I agree with Thomas. And we have responses from the DPAs to that effect wrt the 2013 RAA negotiations (I think it was Kohnstamm at the time....2012)

Marika Konings:I will release the slides so that everyone can scroll at their leisure

Amr Elsadr (NCSG):This once, I was actually glad the presenter had control of the slides. :-)

Amr Elsadr (NCSG):Article 6-1(b) refers to contracts to which the data subject is a party, so would presume consent of the data subject, no? Thought that was a given.

Benedict Addis - SSAC:I see 6 1 b as over-riding consent, not as implying it. "We need your personal data to do our job".

Benedict Addis - SSAC:You also can't withdraw consent for the processing of your personal data under 6 1 b. You must instead sever the contract.

alan Woods (RYSG):+1 benedict ... i would tack on this and you specific consent is not necessary for all aspects for us to achieve the contract

alan Woods (RYSG):*your

Benedict Addis - SSAC:It all comes down to the intent of GDPR. It's really designed to stop companies processing data outside of contract, must notably for marketing.

Benedict Addis - SSAC:(not stop. Control would have been a better choice of word)

alan Woods (RYSG):yes ... limited to the original purpose, as enshrined in the contract.

Thomas Rickert (ISPCP):Marika, did you see the questions I added to the google doc earlier today?

Marika Konings:@Thomas - those are in the note pod, but these were not sent to Becky in advance of the meeting as these came in too late. Hopefully she will be able to get to those as well.

alan Woods (RYSG):are these 'bits and pieces' sufficient to ground compliance / transparency and that they apply to every single registration in existence today. The registrants were never told such purposes, and we can;t just add purposes ... they must be specific.

Stephanie Perrin (NCSG):Marketing is less of a focus now than profiling. For profiling, there are much broader markets, notably governments. Drafters of GDPR were well aware of this.

alan Woods (RYSG):specific at the time of collection - to complete my thought.

Stephanie Perrin (NCSG):Hence the emphasis on privacy by design, which requires an understanding of surveillance implications.

Kavouss Arasteh (GAC):Beckie, you referred to the need of implementing some sort of safeguards, Where these safe guards from from ?

Kavouss Arasteh (GAC):What is the assurance that if, and only if, such safeguard are identified and are available they would be really safeguard the collected or processed dat

Stephanie Perrin (NCSG):Third party valued added service providers have been scraping the data for years. Could the EDPB issue an order to stop that processing?

alan Woods (RYSG):https://urldefense.proofpoint.com/v2/url?u=https-3A_iapp.org_news_a_expect-2Dcease-2Dprocessing-2Dorders-2Dover-2Dfines-2Dunder-2Dthe-2Dgdpr_&d=DwlFaQ&c=FmY1u3Pjp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=k7uKdjSb7_ZjItyVqrCYHo_rKms9SFxImbYEJqG-y9l&m=P1b0INgXHp5P4zO-t2wRdVJlx3teOzf8broCpM-kvkU&s=ajpHPDtx53x5Zb18WcfYpICEOmuzKsjQc7BRWj0PpeM&e= the Irish DPA is very clear that sh will err on the use of cease-processing orders.

Stephanie Perrin (NCSG):Safeguards usually refer to accepted standards Kavouss.

Kavouss Arasteh (GAC):GPDR may odrder such action only inside the EU

Stephanie Perrin (NCSG):Hence the NCSG's focus on standards development in this area

alan Woods (RYSG):that still affects the business of 99% of the Contracted parties

Stephanie Perrin (NCSG):Actually the recent order from the UK Commissioner is to stop processing outside the EU>.....Canada to be precise.

Benedict Addis - SSAC:@Kavouss - yes, but GDPR is clear that 'inside the EU' applies to non-EU companies processing the data of EU citizens.

alan Woods (RYSG):it would be very amiss to ignore an order to purports to prevent you from processing all EEA sourced data. We must be realistic on this.

Benedict Addis - SSAC:@Alan amiss but not unlawful...

Benedict Addis - SSAC:(actually, REmiss :)

Kavouss Arasteh (GAC):when i referred to EU I meant including EEA

Stephanie Perrin (NCSG):for reference https://urldefense.proofpoint.com/v2/url?u=https-3A_www.mishcon.com_news_articles_first-2Duk-2Denforcement-2Daction-2Dunder-2Dgdpr-2Dand-2Dthe-2Dnew-2Ddata-2Dprotection-2Dact&d=DwlFaQ&c=FmY1u3PJp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=k7uKdjSb7_ZjItyVqrCYHo_rKms9SFxImbYEJqG-y9I&m=P1b0INgXHp5P4zO-t2wRdVJlx3teOzf8broCpM-kvku&s=rLDzOkuE13Lr7DY8QDvhC27DKOa4Wgt0GyyWsGmcbxk&e=

alan Woods (RYSG):benedict if you were a business being officially told not to process EU data... genuinely are you suggesting that you would not be affected by this? no it's not 'Unlawful for certain non EEA companies', but again let's be realistic here.

Stephanie Perrin (NCSG):Worthwhile remembering that the DPAs have been working on cooperative arrangements for the past 25 years, since the German railway case years ago...

alan Woods (RYSG):also if we were continuing to ignore the GDPR ... why did we need the temp spec?

Benedict Addis - SSAC:@Alan - quite the opposite. I'm not suggesting non-compliance. I'm saying that ICANN should make a reinforcing statement that it expects contracted parties to abide by this law.

Hadia Elminiawi - ALAC:Totally agree - we should focus on what we can reach consensus on during the remaining time

Benedict Addis - SSAC:(Sorry, wrote 'ICANN', meant 'Temp Spec')

Hadia Elminiawi - ALAC:yes

alan Woods (RYSG):apologies benedict .. knee jerk reaction lol .. completely agree

Benedict Addis - SSAC:No dramas Alan!

Stephanie Perrin (NCSG):This would be appropriate, since if they are going to enforce against the contracted parties it is pretty clear that they are the data controller and the contracted parties are processors

Stephanie Perrin (NCSG):Processors governed by contract

Benedict Addis - SSAC:Great question Mark

Stephanie Perrin (NCSG):(referring to Mark's comment)

Benedict Addis - SSAC:+1 Stephanie

Diane Plaut (IPC):Thank you Mark for your question

Stephanie Perrin (NCSG):We would still need a clear access policy to be included in the contract.

Stephanie Perrin (NCSG):This would also alleviate risk for processors operating in countries where the rule of law may not be maximally operative.

Georgios Tselentis (GAC):Follow up to Marc's question: What needs to be the legal ground for ICANN to do so and be also GDPR compliant?

Benedict Addis - SSAC:Stephanie I'm sure you meant this - but can I clarify that the enforcement would be ICANN's *contractual* enforcement of its contracted parties. And not external enforcement from EDPB, DPA's etc

alan Woods (RYSG):The Trachtenberg model, although needing some clarifications and changes, is actually quite positive in my opinion. It accepts that this is a purpose of ICANN, and not a purpose of the CPH. thus doesn't try to force that purpose on the contracted parties. this is closer to the concept of necessity, and minimization in my book. The simple processors issue is one of the matters that needs work.

alan Woods (RYSG):[for the record - complete personal opinion there]

Thomas Rickert (ISPCP):Question: Our group will work on the responsibilities of the parties and on the question of (joint) controllers and processors. Will ICANN accept whatever the outcome of this process is? If not, how can our group ensure that recommendations pertaining to this question will not be rejected?

James Bladel (RrSG):That model transfers a lot (not all) of CP risk from CPs to ICANN. If they'll accept it.

alan Woods (RYSG):great question Thomas!

Thomas Rickert (ISPCP):If ICANN and the CPs jointly determine the purposes (they do not all have to like them, though), they would be joint controllers, so it is not only about who is pursuing purposes imho.

Benedict Addis - SSAC:There's no such thing as "co-processors"

Diane Plaut (IPC):Agree Thomas and James, the issue lies in the need for ICANN to address the legal risk and make clear their responsibility base line

Benedict Addis - SSAC:"If ICANN and the CPs jointly determine the purposes (they do not all have to like them, though), they would be joint controllers, so it is not only about who is pursuing purposes imho."

<--- This.

Thomas Rickert (ISPCP):If parties jointly determine the purposes and the means of processing, that makes them joint controllers, regardless of what we say :-)

Thomas Rickert (ISPCP):@Benedict: ???

Benedict Addis - SSAC:@Thomas I'm just agreeing with you. In a millennial kind of a way.

alan Woods (RYSG):agreed. We can then set that all out in a JCA. And yes we are joint and severally liable, but we can give ourselves much more legal comfort for going forward.

Thomas Rickert (ISPCP):Great! You made my day, Benedict

Thomas Rickert (ISPCP):You can have stipulations in the JCA to reflect that those who wants certain things have to indemnify the others against the risks.

alan Woods (RYSG):seems like the reasonable path forward.

Georgios Tselentis (GAC):FYI we do a survey with CENTR on CC TLDs. Keep you posted on the outcomes

Stephanie Perrin (NCSG):In order for this to work, Contracted parties are going to have to examine the "picket fence" and take a whole new approach to their contractual negotiations (not to continue a theme I have been on for the past year.....)

Benedict Addis - SSAC:@Kurt follow up q please

Thomas Rickert (ISPCP):...and the third party obtaining the data will also be responsible as a (separate) controller. So it is in the requestor's interest as well to make sure no illegal transfers to third parties occur. I think there need to be indemnifications and maybe even financial securities to safeguards against the risks.

alan Woods (RYSG):they are not controllers in this ecosphere though .. there is a hard border between themm . these "accesses" are controllers in their won right, but this does not lessen the liability of the disclosing controller in any way.

alan Woods (RYSG):*own right

alan Woods (RYSG):also *hard border* ... shudder

Becky Burr:@Stephanie - WHOIS is by definition in the Picket Fence

Diane Plaut (IPC):Agree Thomas re the risk, and Becky that the contractual clauses will be needed.

Diane Plaut (IPC):Thank you Thomas - this is the key and most relevant question.

Stephanie Perrin (NCSG):Controllers who receive data from Contracted parties then become part of an ICANN ecosystem where ICANN is controller, CP are controllers for their client relations but not RDS data processed for ICANN, and third parties are processors with respect to the ICANN ecosystem and controllers in their own right WRT their subsequent processing.

Stephanie Perrin (NCSG):pretty messy, and none of this including joint liability has been addressed in UAM, unless I am missing something.

Thomas Rickert (ISPCP):If we determine that Rrs, Rys and ICANN are joint controllers. How can we ensure ICANN does not refuse to sign a JCA?

Daniel Halloran (ICANN Org Liaison -Legal):Thanks Thomas and Becky. We're happy to take that on as a question to ICANN Org. We'll consult with our colleagues and get a response back as soon as possible. Tgabjs.

Thomas Rickert (ISPCP):Daniel, thanks. That is good news.

Daniel Halloran (ICANN Org Liaison -Legal):Thanks :-)

Stephanie Perrin (NCSG):+1 Thomas

Thomas Rickert (ISPCP):Becky and Dan: To be perfectly clear: I am not suggesting ICANN will cause problems. I just want to make sure we all we can to avoid compliactions.

Thomas Rickert (ISPCP):...and thanks Becky for answering my questions.

Kristina Rosette (RySG):[oops. been back for a while and forgot to change my status.]

Stephanie Perrin (NCSG):This has been an excelllent session, thank you very much!!!

Matt Serlin (RrSG):thanks so much Becky!

alan Woods (RYSG):Thank you very much Becky!

Stephanie Perrin (NCSG):PS Becky you could join the EPDP....

Kristina Rosette (RySG):Thanks very much, Becky!

Marc Anderson (RySG):thanks you Becky

Julf Helsingius (NCSG):Thanks!

Diane Plaut (IPC):Thank you Becky!

Thomas Rickert (ISPCP):Thanks all!

Leon Sanchez (ICANN Board Liaison):thanks everyone

Benedict Addis - SSAC:Brilliant, thank you

Georgios Tselentis (GAC):thank you bye

Tatiana Tropina (NCSG):thank you! bye