

Adobe Connect: 26

Alan Greenberg (ALAC)	Julf Helsingius (NCSG)
Alan Woods (RySG)	Kurt Pritz (Chair)
Amr Elsadr (NCSG)	Leon Sanchez (ICANN Board Liaison)
Ashley Heineman (GAC)	Lindsay Hamilton-Reid (RrSG Alternate)
Ayden Férdeline (NCSG)	Marc Anderson (RySG)
Ben Butler (SSAC)	Margie Milam (BC)
Benedict Addis (SSAC)	Mark Svancarek (BC)
Beth Bacon (RySG Alternate)	Matt Serlin (RrSG)
Brian King (IPC Alternate)	Milton Mueller (NCSG)
Diane Plaut (IPC)	Rafik Dammak (GNSO Council Liaison)
Georgios Tselentis (GAC)	Rahul Gosain (GAC Alternate)
Hadia Elminiawi (ALAC)	Stephanie Perrin (NCSG)
James Bladel (RrSG)	Thomas Rickert (ISPCP)

Guests:

None

On Audio Only:

Farzaneh Badii (NCSG)

Apologies:

Emily Taylor (RrSG)
Kavouss Arasteh (GAC)
Kristina Rosette (RySG)
Alex Deacon (IPC)
Esteban Lescano (ISPCP)

Audio Cast (FOR ALTERNATES AND OBSERVERS)

Peak: 9 joined

View Only Adobe Connect:

37 joined

Staff:

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

AC Chat:

Andrea Glandon: (11/6/2018 07:04) Welcome to the EPDP Team Meeting #23 held on Tuesday, 06 November 2018 at 14:00 UTC.

Andrea Glandon: (07:04) Wiki Agenda Page: <https://community.icann.org/x/qA68BQ>

James Bladel: (07:54) Hi folks. I'm here but have a crew working at the house today, so may need to step away occasionally.

Terri Agnew: (07:55) Thanks for this update James, good luck with the work being done.

James Bladel (RrSG): (07:55) Just starting today, so I'm expecting noisy demolition stuff. :)

Ayden Férdeline (NCSG): (07:55) Hi all

Julf Helsingius (NCSG): (07:58) That is a noisy mic

Andrea Glandon: (08:01) Please make sure to mute your mics, thank you!

Alan Woods (RySG): (08:03) I appear to not see the agenda ... I'm just going to reload (still on audio bridge though)

Marika Konings: (08:04) See <https://community.icann.org/x/5QDVBO>

Thomas Rickert (ISPCP): (08:10) We should really rethink timelines. I would rather be a bit late, but have a good work product for public comment.

Ayden Férdeline (NCSG): (08:10) What happens if we miss the 19th? How much time can we possibly reclaim if we trim down over stages of the timeline, i.e. 1 less day of Board review, etc?

Julf Helsingius (NCSG): (08:10) Do we know what continent it will be on?

Ayden Férdeline (NCSG): (08:10) * other stages

Julf Helsingius (NCSG): (08:10) continent

Amr Elsadr (NCSG): (08:11) @Thomas: +1. Part of the investigations may be where the timeline can possibly be compressed following submission of the final report to the GNSO Council.

Thomas Rickert (ISPCP): (08:11) We see a lot of rehashing of arguments that have been made previously these days. I think we should really discuss more and tease out the chances for consensus more. If we present diverging views to the community, we will get diverging views back. The better we prep, the more helpful the community feedback will be.

Lindsay Hamilton-Reid (RrSG Alternate): (08:12) Even though Amr's response has support from many of us?

Milton Mueller (NCSG): (08:12) Thomas is correct. Kurt, I interpreted your comment as saying you read Amr's email but chose to disregard it

Marika Konings: (08:13) @Thomas - one idea there is as well to ask the broader community questions that may help inform further deliberations, instead of just presenting diverging views?

Mark Svancarek (BC): (08:13) lost audio?

Hadia Elminiawi - ALAC: (08:13) We need some new information we can not keep on saying same stuff over and over - research is a good path forward

Lindsay Hamilton-Reid (RrSG Alternate): (08:13) We do have diverging views so it's best to represent that.

Mark Svancarek (BC): (08:13) lol

Marika Konings: (08:13) The proposed language on natural vs. legal aims to outline the different viewpoints, but also includes a number of questions that may help further inform deliberations on this topic.

Lindsay Hamilton-Reid (RrSG Alternate): (08:14) What's the point of the research though? Will it really help?

Alan Greenberg (ALAC): (08:14) I accept Kurt's position. If we are going to respond to objections to it we need to consider support also.

Ashley Heineman (GAC): (08:14) Can't we do both simultaneously? IE: seek further input from DPAs/research while conducting a public comment?

Amr Elsadr (NCSG): (08:15) @Marika: That's not how I'm reading it. It seems to me to indicate that the distinction between legal vs natural is the direction we're headed for, and that we're preparing for that with additional recommendations.

Lindsay Hamilton-Reid (RrSG Alternate): (08:15) Consensus has not been reached on various points.

Brian King (IPC): (08:15) +1 Ashley

Georgios Tselentis (GAC): (08:15) @Kurt In terms of procedure: how do we handle divergent views from the group and more divergent views coming back from the consultation? How the consensus will be built from those?

Milton Mueller (NCSG): (08:16) Good question Georgios,

Matt Serlin (RrSG): (08:16) +1 Georgios

Amr Elsadr (NCSG): (08:16) I have no objection to seeking input from DPAs, but don't believe the recommendation for research, whether on legal vs natural or geo location of RNHs is something we all agree on.

Milton Mueller (NCSG): (08:16) This is the problem we have with the initial report. If you simply document existing disagreements and send it out to the community for comment, you will just get the same disagreements thrown back in our faces

Lindsay Hamilton-Reid (RrSG Alternate): (08:17) Agreed Amr.

Ashley Heineman (GAC): (08:17) I agree with Milton, but there is always that stinker issue of time.

Milton Mueller (NCSG): (08:17) So this is really poor management of the PDP process.

Ayden Férdeline (NCSG): (08:17) +1 Lindsay. The fact that there is a divergent of opinion here shows that there's a grey area. How can the contracted parties operate in such an environment? We should be taking the more cautious approach - which is there being no distinction between natural and legal persons - as this offers some real certainty.

Ayden Férdeline (NCSG): (08:17) * this offers some

Milton Mueller (NCSG): (08:17) @Ashley, we need to identify "can't live with" points and then find compromises that we can ask about in public comment

Lindsay Hamilton-Reid (RrSG Alternate): (08:17) Agreed Ayden - there is too much risk and the cost would likely be prohibitive

Diane Plaut (IPC): (08:17) I also agree with Kurt and staff's proposal. I think it is balanced and thoughtful and has set forth the different views of the respective group but makes clear that research through DPA insight and guidance as well as ccTLD will bring us forward to an informed policy decision. As noted by Ashley, this can be done simultaneously with receiving public comment.

Lindsay Hamilton-Reid (RrSG Alternate): (08:19) It's not a legal requirement to have the distinction between natural and legal persons - if we do or do not, is not breaking any laws. However publishing personal data is unlawful.

Thomas Rickert (ISPCP): (08:19) I just sent three slides I just did to make it easier for the group to follow my thinking.

Amr Elsadr (NCSG): (08:19) In my email, I never asked that different views of the respective group not be presented. On the contrary. I thought I encouraged it.

Thomas Rickert (ISPCP): (08:19) If staff could bring those up would be great.

Amr Elsadr (NCSG): (08:19) @Lindsay: +1

Rahul Gosain: (08:20) Apologies for joining late

Marika Konings: (08:20) @Thomas - if there is time left at the end of the meeting, maybe we can come back to it at the end, or otherwise Thursday's meeting?

Thomas Rickert (ISPCP): (08:20) Marika - it would be great if we had a few mins so folks can let that sink in :-)

Marika Konings: (08:21) @Thomas - I have not received your email yet, but as soon as I get it I will make sure to have it ready for upload if there is time remaining.

Hadia Elminiawi - ALAC: (08:22) Conducting research does not mean that any conclusions have been reached. To rely only on the public comments would leave us in the same position that we are at now - public comments cannot provide definitive answers with regard to some crucial points – after receiving the results of the research consensus will need to be reached with regard to the policy that the group (us) will come up with.

Mark Svancarek (BC): (08:23) If you believe that registration data is an important tool in various legitimate scenarios, then (all things being equal), less redaction is better than more redaction; hence the request for a distinction between legal and natural persons. I'd like to see a policy that makes this explicit, while acknowledging that wherever the distinction cannot be made, the default is to redact. Such a policy acknowledges the value and purpose of the data while avoiding additional risk to registrars.

Lindsay Hamilton-Reid (RrSG Alternate): (08:24) That's just a policy though - the law does not require it Mark.

Mark Svancarek (BC): (08:24) Yes, I am writing about policy.

Milton Mueller (NCSG): (08:24) I like the idea of default redaction, and if stakeholders are willing to make a compromise we could move forward. But "research" is just a delaying tactic that allows people to hold on to their pre-determined views and then attempt to use the research to justify it,

Lindsay Hamilton-Reid (RrSG Alternate): (08:24) Well policies are not legal requirements

Ayden Férdeline (NCSG): (08:25) I find this confusing. Sometimes some want us to only do the bare minimum that the GDPR requires, now some want us to go above and beyond and distinguish between natural and legal persons.

Brian King (IPC): (08:26) +1 Mark Sv

Lindsay Hamilton-Reid (RrSG Alternate): (08:26) Agreed Ayden

Hadia Elminiawi - ALAC: (08:26) @Milton in the end no policy can be made without consensus

Mark Svancarek (BC): (08:26) I have been consistent on this.

Milton Mueller (NCSG): (08:27) @Hadia I can tell you havevn't been around ICANN very long.

Hadia Elminiawi - ALAC: (08:27) @Milton :)

Lindsay Hamilton-Reid (RrSG Alternate): (08:27) What is the purpose of the research Hadia?

Stephanie Perrin (NCSG): (08:28) The fact that GDPR does not apply to legal persons is a jurisdictional matter. It does not mean that the Charter rights of legal persons can be ignored, a matter that is stated in the recitals. Given the inability to communicate the distinction between natural and legal persons wrt domain names, and thus get effective consent to voluntary disclosure, I don't really think research is required to clarify this point. Exactly what research do you want GDD to do? Kindly do not assume that what ccTLDs are doing at the moment is compliant with data protection law.

Alan Greenberg (ALAC): (08:28) @Lindsay, among other things, it may tell us whether we are allowed to rely on the information the registrant gives us.

Brian King (IPC): (08:28) @Amr I have some language to propose that may clarify that

Brian King (IPC): (08:28) Shall I drop in the chat?

Lindsay Hamilton-Reid (RrSG Alternate): (08:29) +1 Stephanie

Ayden Férdeline (NCSG): (08:29) +1 Stephanie

Lindsay Hamilton-Reid (RrSG Alternate): (08:29) It should not be mandatory to collect tech or admin data.

Alan Woods (RySG): (08:29) +1 stephanie. Thank you for your sense

Amr Elsadr (NCSG): (08:29) Thanks, Kurt.

Marika Konings: (08:31) If my recollection is correct, it was agreed in the context of the deliberations on Purpose C that optional would mean, optional to be provided by the RNH, but required by registrars to be asked.

Stephanie Perrin (NCSG): (08:31) I would also like to remind folks that the last time we argued over this issue back in 2004-6, the privacy issue was not resolved, and instead we commissioned quite a few WHOIS studies on matters that did not in the slightest contribute to resolving the privacy issues. Lets not do this again, please.

Amr Elsadr (NCSG): (08:31) @Marika: Some of us were under that same impression. Others were not, which is why I'm seeking clarification.

Hadia Elminiawi - ALAC: (08:32) @Lindsay there are some crucial points dealing with legal aspects - if the research says that legally it is not possible the discussion is over if not then we might proceed with some further discussions and maybe some other new ideas that we all agree on.

Lindsay Hamilton-Reid (RrSG Alternate): (08:32) 'Hadia

Lindsay Hamilton-Reid (RrSG Alternate): (08:32) @Hadia, there are lawyers within this group who can tell you that.

Lindsay Hamilton-Reid (RrSG Alternate): (08:32) I think our positions are still far apart.

Hadia Elminiawi - ALAC: (08:33) lawyers cannot provide the answers on behalf of the DPAs - it is not that simple

Brian King (IPC): (08:33) In accordance with the EDPB's guidance that GDPR does not apply to legal persons and personal data identifying individual employees (or third parties) acting on behalf of the registrant should not be made publicly available by default in the context of WHOIS: If the Registered Name Holder elects to provide contact information for a technical contact that differs from the Registered Name Holder, the Registrar is required to obtain consent from the technical contact prior to publication. One suggested method of obtaining this consent is to include this consent in the WHOIS Accuracy Program Specification Section 1.f.i. verification email.

Alan Woods (RySG): (08:34) Guys Consent is not just a throwaway term ... it' a huge issue that needs a PDP of it's own . Seriously?

Milton Mueller (NCSG): (08:34) why is the word "Redact" crossed out here?

Alan Woods (RySG): (08:34) "throwaway" term

Lindsay Hamilton-Reid (RrSG Alternate): (08:34) Wow, what? Consent from the tech contact that the registrant provides? No, that is not an option. Massive risk and issues with that.

Marika Konings: (08:34) @Milton - because per the redaction discussion, this information would not be publicly posted.

Ayden Férdeline (NCSG): (08:34) I cannot live with that language either.

Marika Konings: (08:35) so it would be about disclosure, not publication

Milton Mueller (NCSG): (08:35) OK, thanks Marika

Lindsay Hamilton-Reid (RrSG Alternate): (08:36) Unless it is the registrant, the registrar is not going to have a relationship with the technical contact.

Ayden Férdeline (NCSG): (08:36) by "that language" I mean the language in the chat provided by Brian. I do not like relying upon consent - fraught with risk for the contracted parties, can be induced, and humans are not always rational actors and may ' consent' when there is a danger to themselves

Milton Mueller (NCSG): (08:36) If a RNH provides Tech contact data without the consent, isn't the RNH responsible, not the registrar

Lindsay Hamilton-Reid (RrSG Alternate): (08:37) Business value? That's not a reason to collect that data!

Milton Mueller (NCSG): (08:37) in other words, why "require" the registrar to get consent

Ashley Heineman (GAC): (08:37) That is my understanding Milton.

Milton Mueller (NCSG): (08:38) it's disclosure in this case, Mark, not publication

Brian King (IPC): (08:39) Require the registrar to get consent because we should not be publishing third-party contact data without consent, right?

Alan Greenberg (ALAC): (08:39) @Milton, That is my assumption as well. And that addresses any "natural person" information in a legal person's entry.

Ayden Férdeline (NCSG): (08:39) How does that address it @Alan G?

Matt Serlin (RrSG): (08:39) So the registrar collects the data and holds onto it until the technical contacts confirms it's valid? For how long would they hold onto it before they disposed of it?

Alan Greenberg (ALAC): (08:39) @Ayden - see Milton's comment.

Ayden Férdeline (NCSG): (08:40) I have read it @Alan G, kindly explain your comment please

Amr Elsadr (NCSG): (08:40) @Alan: +1

Lindsay Hamilton-Reid (RrSG Alternate): (08:41) +1 Alan

Beth Bacon (RySG): (08:41) +1000 Alan

Ayden Férdeline (NCSG): (08:41) the GDPR refers to identifiability, not just personal information, and if a natural person can be identified from the information belonging to a legal person, that is problematic. you appear to me to be saying you have some solution to this problem when you say "that addresses any "natural person" information in a legal person's entry"

Julf Helsingius (NCSG): (08:41) +1 Alan

Ayden Férdeline (NCSG): (08:41) ^ that comment is for @Alan G

Ayden Férdeline (NCSG): (08:41) +1 Alan W

Lindsay Hamilton-Reid (RrSG Alternate): (08:42) Oh I meant Alan W too

Amr Elsadr (NCSG): (08:42) @James: +1

Milton Mueller (NCSG): (08:43) Agree with James B here. Seems like bolting consent or other new mechanisms onto registrar/registry systems is a "can't live with" for the contracted parties. Can we agree to put these kinds of changes off the table so we can finishe the temp spec on time?

Matt Serlin (RrSG): (08:43) well said James

Lindsay Hamilton-Reid (RrSG Alternate): (08:43) Agree completely James#1

Julf Helsingius (NCSG): (08:44) Agree with James too

Ayden Férdeline (NCSG): (08:44) +1 James

Lindsay Hamilton-Reid (RrSG Alternate): (08:44) Too right - there is no need to collect this data.

Alan Woods (RySG): (08:44) +1 james ... much more balanced!! lol

James Bladel (RrSG): (08:45) SO we would collect, but not transmit to Registry or never disclose?

Lindsay Hamilton-Reid (RrSG Alternate): (08:45) So why collect?

Brian King (IPC): (08:45) For the record, we're here to find a compromised solution to the challenge that we know that many/some registrants would like to designate a separate technical contact.

Mark Svancarek (BC): (08:46) If not published, you would provide a web form to allow anonymous contact

Milton Mueller (NCSG): (08:46) That's fine, Brian, but we never agreed to add a consent-obtaining process to that

Lindsay Hamilton-Reid (RrSG Alternate): (08:46) I see the word compromise being used here - we are supposed to be compliant with the law and therefore, it's not about compromise. If we don't need it, we should not collect it in line with the principle of data minimisation.

Brian King (IPC): (08:46) Consent seemed reasonable, and I understand and appreciate Alan's point that it may not be as easy as "get them to consent and we're all good here"

Ayden Férdeline (NCSG): (08:47) +1000 Lindsay

Mark Svancarek (BC): (08:47) Many customers desire to have a tech contact

Ashley Heineman (GAC): (08:47) Agree with Kurt,. My recollection is that we agreed to collection, but optional for the registrant to provide with a web form. I agree that getting consent is a new step.

Hadia Elminiawi - ALAC: (08:48) +1 Kurt +1 Ashley

Amr Elsadr (NCSG): (08:48) @Thomas: Exactly right. +1

Ashley Heineman (GAC): (08:49) There are in fact registrants who want technical contact distinct and there are technical reasons in which to contact them. I realize this has shown to not always be the case and often the tech contact is the same as other contacts, but let's not throw out technical contact outright without thinking through what the registrant wants

Alan Woods (RySG): (08:49) so much agreement with Thomas!

Brian King (IPC): (08:49) Do we agree in principle that RNHs should be able to designate a tech contact that differs in some way from the RNH contact?

Diane Plaut (IPC): (08:49) Agreed Ashley

Brian King (IPC): (08:49) If so, I'm open to discussing any number of ways to make that happen.

Stephanie Perrin (NCSG): (08:50) I think businesses who desire a technical contact should be considering a second level, signed and authenticated form that they submit to their registrar. They can include that in their contract with their registrar. At a later time we could discuss how RDAP could enable realtime access to that disclosure statement. However, it has very little to do with the discussion of the minimum data set for the purposes of the temp spec replacement

Beth Bacon (RySG): (08:50) Perfectly put, Thomas.

Alan Greenberg (ALAC): (08:50) EDPB letter already said there was no problem with tech and admin contacts and even suggested implementation.

Alan Greenberg (ALAC): (08:50) It is one of the few areas we have explicit direction on.

Amr Elsadr (NCSG): (08:50) Thomas said everything I wanted to say, so taking my hand down.

James Bladel (RrSG): (08:50) All contacts are treated the same, I believe.

Ashley Heineman (GAC): (08:50) It is optional. If the registrant doesn't want to provide for whatever reason, they do not have to. Why would we want to make it harder than that?

Hadia Elminiawi - ALAC: (08:50) + Alan G

Ayden Férdeline (NCSG): (08:51) +1 Stephanie

Ashley Heineman (GAC): (08:51) Lindsay, isn't that in violation of your contract with ICANN?

Brian King (IPC): (08:51) Ashley, yes

James Bladel (RrSG): (08:51) But we noted concerns that collection of this duplicate data was a GDPR risk.

Brian King (IPC): (08:51) This is the EPAG case

James Bladel (RrSG): (08:51) @Brian - yup.

Matt Serlin (RrSG): (08:51) I believe some registrars are carrying forth as Lindsay described and some are collecting still

Matt Serlin (RrSG): (08:51) from what I had heard in Barcelona

Brian King (IPC): (08:51) I work at a contracted party

Brian King (IPC): (08:51) and my hand is up :-)

Brian King (IPC): (08:52) first in the queue

Ayden Férdeline (NCSG): (08:52) +1 Lindsay - very insightful - good to have hard evidence that there aren't swarms of customers requesting to add tech contacts to their domains...

Alan Greenberg (ALAC): (08:52) Please honor the speaker list!

Georgios Tselentis (GAC): (08:53) Are we rediscussing whether collection is necessary?

Alan Woods (RySG): (08:53) well why not make it optional for the registrar ... and you can look after it as controller... Not that it should be a mandatory collection as basic policy

Brian King (IPC): (08:53) Ayden, we have swarms of customers requesting to add different tech contacts

Brian King (IPC): (08:54) +1 Alan Woods

Lindsay Hamilton-Reid (RrSG Alternate): (08:54) Fine for me Alan. We already took that decision.

Ayden Férdeline (NCSG): (08:54) But @Brian K your customers vary very much from those that most of the contracted parties have

Matt Serlin (RrSG): (08:54) My recollection was that we had proposed making the technical contact optional

Benedict Addis - SSAC: (08:54) Optional for who Matt?

Amr Elsadr (NCSG): (08:55) @Alan W: I believe that would be the way forward on this. Make it optional for the registrar to seek collection of the Tech-C.

Lindsay Hamilton-Reid (RrSG Alternate): (08:55) Agreed Matt - optional for registrars.

Benedict Addis - SSAC: (08:55) Sounds reasonable

Matt Serlin (RrSG): (08:55) optional for the registrar to make available for their clients

Lindsay Hamilton-Reid (RrSG Alternate): (08:55) But in making it optional, do you actually need it then?

Ashley Heineman (GAC): (08:55) Mandatory collection, but made optional for registrant to provide.

Georgios Tselentis (GAC): (08:55) Please define what "optional" means

Benedict Addis - SSAC: (08:55) If the registrant wants to give it, yes

Georgios Tselentis (GAC): (08:55) thanks Ashley

Brian King (IPC): (08:56) I think "optional" means what it says above "If the Registered Name Holder elects"

Alan Woods (RySG): (08:56) well that's for the registrar at that point, and not ICANN policy . So its not for us tio justify. From th ePDP's POV then we are saying it's not necessary ... but it's up to you if you want it.

Brian King (IPC): (08:56) It is necessary for many RNHs

Brian King (IPC): (08:56) Especially non-commercial registrants

Brian King (IPC): (08:56) :-)

Ashley Heineman (GAC): (08:56) I beleive this is what ICANN Council clarified for us in LA. Required to collect, optional for registrant to provide.

Ashley Heineman (GAC): (08:57) Dan?

Alan Woods (RySG): (08:57) so @Brian use a regsitrar who provides the option. basic policy should not make it mandatory.

Matt Serlin (RrSG): (08:57) +1 Alan

Brian King (IPC): (08:57) Hm tricky Alan

Brian King (IPC): (08:57) (tricky situation)

Alan Woods (RySG): (08:58) why? If you don't feel comfortable doing it if its on your shoulder alone, then don;t be making it policy for everybody else. Not tricky at all?

Brian King (IPC): (08:59) I think we'd rather that ICANN ensure that the ecosystem allows it

Alan Woods (RySG): (08:59) yes ... make it optional at the regsitrar level .. that is is the policy.

Beth Bacon (RySG): (08:59) Yes, Alan

Milton Mueller (NCSG): (08:59) Not saying it's impossible to do. Im saying it's out of scope and not required for the ePDP, and can be pushed back to another policy process

James Bladel (RrSG): (09:00) Alan - Dont mischaracterize our positions and statements as strawmen, please.

Milton Mueller (NCSG): (09:00) We do have these field. And we have already agreed that RNH filling them out will be optional

Ashley Heineman (GAC): (09:00) Can we simply go back to what we agreed in LA? A shame to have to reopen debates at the expense of moving forward on other issues.

Lindsay Hamilton-Reid (RrSG Alternate): (09:00) We have always been clear on that Alan G.

Alan Woods (RySG): (09:00) other alan yes James ?

Brian King (IPC): (09:00) That sounds reasonable Alan W

James Bladel (RrSG): (09:00) Yes.

Alan Woods (RySG): (09:01) (phew)

Marika Konings: (09:01) What is currently captured in data elements workbook C based on the previous preliminary agreement is: "Optional data elements for the Registered Name Holder (RNH) to provide, but required for the registrar to offer as data elements the RNH may provide".

Lindsay Hamilton-Reid (RrSG Alternate): (09:01) Please stop talking about consent - it's the way to hell and litigation!

Brian King (IPC): (09:02) Lindsay, what other method would you propose to allow a RNH to submit third-party data for their tech contact?

Brian King (IPC): (09:02) Genuinely would love to know your thoughts, and others'.

Lindsay Hamilton-Reid (RrSG Alternate): (09:02) @Brian, I suggest we don't.

Marika Konings: (09:02) Is the question of what time of agreement/consent needs to be provided and how this can be done, a question to call out in the Initial Report?

Milton Mueller (NCSG): (09:03) Marika: Consent is out

Marika Konings: (09:03) and also put forward to the EDPB on how this could be dealt with

Hadia Elminiawi - ALAC: (09:03) + 1 Kurt keep the agreement and get guidance

Milton Mueller (NCSG): (09:03) there is nothing about consent in the original document and it's a new requirement

Milton Mueller (NCSG): (09:03) there is nothing about consent in the original document and it's a new requirement]

Brian King (IPC): (09:03) Lindsay, you suggest we do not allow RNHs to designate a third-party technical contact?

Lindsay Hamilton-Reid (RrSG Alternate): (09:04) @Brian we don't collect it so, yes.

Brian King (IPC): (09:04) Trying to understand your position

Lindsay Hamilton-Reid (RrSG Alternate): (09:04) What reasons do you need to contact the tech contact?

James Bladel (RrSG): (09:04) can't hear Benedict?

Alan Woods (RySG): (09:04) Thomas already explained Brian . There is a mechanism for consent not received from the Data subject, but that is a whole other registry service / registrar service/ system, and a whole other PDP. That is ICANN's rule not ours! There is a way ... but not in the scope of this ePDP

Mark Svancarek (BC): (09:04) Speak a little louder, please

Lindsay Hamilton-Reid (RrSG Alternate): (09:05) +1 Alan W

Brian King (IPC): (09:05) @Lindsay I think there are a number of reasons that the tech contact could be contacted.

Amr Elsadr (NCSG): (09:05) As Thomas said earlier, when the data subject is not the one providing the personal information (such as is the case in Tech-C), other considerations need to be made, including (but not limited to) what is in Article 14.

Benedict Addis - SSAC: (09:05) https://urldefense.proofpoint.com/v2/url?u=https-3A_labs.ripe.net_Members_Athina_gdpr-2Dlegal-2Dgrounds-2Dfor-2Dlawful-2Dpersonal-2Ddata-2Dprocessing-2Dand-2Dthe-2Dripe-2Ddatabase&d=DwIFaQ&c=FmY1u3PJp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=k7uKdjSb7_ZjItyVqrCYHo_rKms9SFxImbYEJqG-y9I&m=2eW2HuwOK7letxyPJQG29GUuudTRtEls0FbnDgcM-DU&s=0R0XFWgbmR16Z4rDRHYkFT1TB_fNx_DVbA172DFcVY&e=

Marika Konings: (09:05) Note that the EDPB advice states in a footnote in relation to this issue that "Moreover, it should be ensured that the individual concerned is informed."

Amr Elsadr (NCSG): (09:05) Consent won't cut it.

Mark Svancarek (BC): (09:05) could not hear Benedict, please repeat :(

Benedict Addis - SSAC: (09:05) Amr so RIPE are wrong?

Ayden Férdeline (NCSG): (09:06) RIPE's advice should not be relied upon here. Check their mailing list - many of their members disagree with that blog post

Mark Svancarek (BC): (09:06) +1 Milton
Thomas Rickert (ISPCP): (09:06) Controller needs to be able to evidence consent
Alan Woods (RySG): (09:06) +1 thomas
Amr Elsadr (NCSG): (09:06) @Benedict: Can't provide an informed answer to that question, regarding RIPE. Don't know what it is they're doing with this.
Stephanie Perrin (NCSG): (09:07) The registrant is responsible for breaching the other individual's privacy, if such is the case. However, the registrar is responsible for ensuring that consent was obtained. That is even explicit in the law, as I recall.
Stephanie Perrin (NCSG): (09:07) with the caveat of course that I am not a lawyer, I just read everything. Recommended to all on this EPDP.
Benedict Addis - SSAC: (09:07) So the registrar proves a robust removal mechanism. Does that not address the legal risk?
Julf Helsingius (NCSG): (09:07) Benedict: RIPE are relying on advice from their own lawyer, and having second thoughts
Lindsay Hamilton-Reid (RrSG Alternate): (09:08) RIPE's position is not right.
Mark Svancarek (BC): (09:08) Stephanie +1
Margie Milam (BC): (09:08) +1 Marika
Benedict Addis - SSAC: (09:08) Remember here that RIPE are discussing publication and we're purely talking disclosure.
Hadia Elminiawi - ALAC: (09:08) +1 Marika
Milton Mueller (NCSG): (09:09) right, Benedict
Alan Woods (RySG): (09:09) So let the registrar who wishes to rely on 'agency' may do so as a sole controller. Again I repeat should not be basic ICANN policy.
Alan Woods (RySG): (09:10) ... to make it mandatory across all CPs
Lindsay Hamilton-Reid (RrSG Alternate): (09:10) This should definitely not be ICANN policy.
Stephanie Perrin (NCSG): (09:12) No, ICANN cannot make a policy that forces registrars to suffer legal risk for the convenience of either corporate registrants who wish to streamline their DNS procedures, or third parties who do not want to endure any delay in the aggregation of data about RNHs.
Amr Elsadr (NCSG): (09:12) @Milton: +1
Ashley Heineman (GAC): (09:13) I think we are doing registrants a disservice by unilaterally deciding that they can not elect to provide this information if they choose to do so.
Milton Mueller (NCSG): (09:13) there are many registrars. Consumers have a choice
Amr Elsadr (NCSG): (09:13) Yup. Let registrars decide. If their customers want them to collect this data, I suspect they'll find out about it.
Matt Serlin (RrSG): (09:13) they can make a choice to use a registrar that has that as an option
Amr Elsadr (NCSG): (09:14) @Matt: +1
Lindsay Hamilton-Reid (RrSG Alternate): (09:14) +1000 Alan
Milton Mueller (NCSG): (09:14) Right, the fact that ICANN doesn't _require_ something doesn't mean it never happens
Brian King (IPC): (09:14) @Matt agree in principle
Brian King (IPC): (09:15) I'm concerned that registrants who have already elected to have a separate tech contact might not have recourse if their registrar simply stops offering that "service" under the new policy
Matt Serlin (RrSG): (09:15) ok so...where does this leave us? feels like the optional nature of this is close to gaining majority support...yes? no?
Benedict Addis - SSAC: (09:15) No.
Beth Bacon (RySG): (09:15) Well said Alan W.
Matt Serlin (RrSG): (09:15) they have recourse...transfer to one who provides the service they want!

Stephanie Perrin (NCSG): (09:15) Exactly. If I were a registrar, I would adopt the policy I described quite a while ago in the chat, coming up with a form that could be certified by the responsible actors in a corporation. I would not do it for average RNHs, because the burden of informed consent is too high.

James Bladel (RrSG): (09:16) Sorry folks, need to drop. Cheers.

Benedict Addis - SSAC: (09:16) Cheers!

Leon Sanchez (ICANN Board Liaison): (09:16) I will exit the AC room for about half an hour and then come back. I will continue to be on the phone bridge.

Milton Mueller (NCSG): (09:16) EDPB

Lindsay Hamilton-Reid (RrSG Alternate): (09:16) Yes but that should be up to the registrar, not a mandated ICANN policy.

Marika Konings: (09:16) Here is the language from the EDPB advice: Instead, registrants should be provided with the option of providing contact details for persons other than themselves if they wish to delegate these functions and facilitate direct communication with the persons concerned. It should therefore be made clear, as part of the registration process, that the registrant is free to (1) designate the same person as the registrant (or its representative) as the administrative or technical contact; or (2) provide contact information which does not directly identify the administrative or technical contact person concerned (e.g. admin@company.com).

Thomas Rickert (ISPCP): (09:16) So optional for CPs to implement. But if it is implemented, the contracted party has to follow all the legal and technical challenges. I am not against that - don't get me wrong. Just trying to understand where we are.

Amr Elsadr (NCSG): (09:16) @Alan G.: We're not saying that the EDPB is wrong, but that there is more to it than just optional collection for the RNH's part.

Brian King (IPC): (09:16) Thanks Marika. Completely agree.

Marika Konings: (09:17) with as a footnote: 15 The notice requirements applicable to registrars described in the Temporary Specification (in particular at paragraph 7.1.3) do not clearly state that the provision of separate administrative and technical contact details is voluntary rather than obligatory. Moreover, it should be ensured that the individual concerned is informed. See also article 26 GDPR concerning joint controllers.

Diane Plaut (IPC): (09:17) Agree with Alan.

Alan Greenberg (ALAC): (09:18) @Stephanie, so the EDPB is wrong?

Brian King (IPC): (09:18) And if it's optional for registrars to support, many will not, and many registrants could be deprived of this option, whether they're currently taking advantage of it or whether they won't be exposed to the opportunity in the future

Thomas Rickert (ISPCP): (09:18) Marika, thanks for the quote. However, I am sure the EDPB surely did not want to release us from the obligation to implement it in a compliant fashion. I did not say it cannot be done. However, I am concerned the industry cannot do it now and it might be outside the scope of this group.

Hadia Elminiawi - ALAC: (09:18) @Marika I am not sure why we continue disputing the EDPB recommendation while compliance is what we seek

Amr Elsadr (NCSG): (09:18) Nobody said the EDPB is wrong.

Marika Konings: (09:18) @Thomas - isn't that a clarifying question that could be put forward to get further clarity on this issue?

Thomas Rickert (ISPCP): (09:19) Marika, why not, yes.

Hadia Elminiawi - ALAC: (09:19) +1 Kurt

Diane Plaut (IPC): (09:19) +1 Kurt

Matt Serlin (RrSG): (09:20) no we are saying it's optional for the registrars to make optional :)

Milton Mueller (NCSG): (09:20) that's my preferred outcome, Matt

Alan Woods (RySG): (09:20) =1 Matt

Alan Woods (RySG): (09:20) or +1 but .. we are equal too

Lindsay Hamilton-Reid (RrSG Alternate): (09:21) At the risk of sounding like a broken record, it should not be mandatory to collect this data. We will not agree that this becomes policy.

Hadia Elminiawi - ALAC: (09:21) @Matt we require the registrars to make it optional to the registrants

Margie Milam (BC): (09:21) agree with Ashley

Alan Woods (RySG): (09:21) That's not what we are saying Ashley.

Marika Konings: (09:21) Maybe we should document in the Initial Report who supports that registrars should be required to ask for this information, but optional for RNH to provide, and those that are of the view that registrar can optionally ask for this information, and note that further questions will be asked from the EDPB to help inform further deliberations in relation to this topic?

Stephanie Perrin (NCSG): (09:22) Alan G, how did you read into what I said, "the EDPB is wrong"? You are misinterpreting the letter, and omitting the requirement for due diligence with respect to obtaining consent that is required. Becky Burr even explained this in one of the first cross community primers on the GDPR .

Alan Woods (RySG): (09:22) And at the end of the day a consumer who wishes to provide the information may choose their regsitrar wisely

Margie Milam (BC): (09:22) Alan- that doesnt make sense

Brian King (IPC): (09:22) +1 Ashley and Margie, it seems best that registrars are required to support this at the RNH's option

Alan Woods (RySG): (09:22) such bad spelling! sorry!

Margie Milam (BC): (09:22) since there are registrations that already exist

Margie Milam (BC): (09:22) and they don't know enough to even ask the question

Thomas Rickert (ISPCP): (09:23) Let's try to take stock: I think we all agree that tech-c data should no longer be required to be provided on a mandatory basis.

Benedict Addis - SSAC: (09:23) Yes

Ashley Heineman (GAC): (09:23) I agree with Margie.

Milton Mueller (NCSG): (09:23) @Marika that works, though you should note that registrars may have legal liability for a RNH providing data about a third party, which is why they want the option

Thomas Rickert (ISPCP): (09:23) I think we also agree that optional collection of tech-c data poses technical and legal challenges.

Ashley Heineman (GAC): (09:23) It should be required for registrars to make it possible for those registrants who want the data collected to do so.

Thomas Rickert (ISPCP): (09:23) One question is whether this work is inside or outside of the scope of the PDP.

Brian King (IPC): (09:24) +1 Ashley

Alan Woods (RySG): (09:24) Marige, please tell me that you don'tthink that anything we agree in the eDPDP is retroactive? It will not be. That is a huge challenge we haven't even discussed yet.

Brian King (IPC): (09:24) Alan yes that is one of the biggest reasons I've heard that the natural/legal person distinction is unworkable

Thomas Rickert (ISPCP): (09:25) then, I think those who are asking for the (optional) collection should probably write up a way on how this can be operationalized.

Mark Svancarek (BC): (09:25) In BCN we discussed the option that we not apply new policy to old data.

Hadia Elminiawi - ALAC: (09:26) @Alan woods I don't think that we expect what we agree on to be retroactive

Benedict Addis - SSAC: (09:26) Thomas. The technical challenges are not negligible, but they are possible. The legal challenges are overstated given that the only analagous organisation (RIPE) is doing exactly this type of data processing and is not only collecting but also publishing.

Mark Svancarek (BC): (09:26) +1 Benedict. This is Microsoft's position as well.

Thomas Rickert (ISPCP): (09:26) Benedict - I never said it cannot be done. There is a lot of confusion. We need to write it up.

Brian King (IPC): (09:26) +1 Benedict

Julf Helsingius (NCSG): (09:26) Benedict: as I pointed out, the RIPE view has not been tested in court or with DP people

Margie Milam (BC): (09:27) +1 Benedict

Brian King (IPC): (09:27) Also +1 Alan, support the non-controversial 1 year data retention policy

Diane Plaut (IPC): (09:27) Well said, Alan W.

Ayden Férdeline (NCSG): (09:27) +1 Julf

Mark Svancarek (BC): (09:27) I support the non-controversial 1 year retention policy

Benedict Addis - SSAC: (09:28) +1 Thomas

Matt Serlin (RrSG): (09:28) agree with Thomas that it should be consistent across the board

Milton Mueller (NCSG): (09:29) SPEAK UP BENEDICT

Benedict Addis - SSAC: (09:30) SORRY!

Benedict Addis - SSAC: (09:31) I said that we should be careful to make sure that the collection of data elements by registrar are homogenised when we come to merge the workbooks

Benedict Addis - SSAC: (09:31) And not create a nightmare for the CPH

Hadia Elminiawi - ALAC: (09:32) +1 Thomas (same retention period all across 1 year)

Marika Konings: (09:32) Trying to get the slides up, Thomas

Diane Plaut (IPC): (09:34) Agree, Benedict -

Stephanie Perrin (NCSG): (09:42) very very helpful Thomas.

Alan Woods (RySG): (09:44) +1 very helpful

Rahul Gosain (GAC - ALT): (09:44) @Dan- Will it be possible to maintain such a Joint Controller agreement as is being proposed?

Georgios Tselentis (GAC): (09:45) @Thomas: how a joint controller can be legally relieved from responsibility? I am not sure I understood your point

Rahul Gosain (GAC - ALT): (09:45) Purple Haze!

Daniel Halloran (ICANN Org Liaison -Legal): (09:45) @Rahul: ICANN Org could look into this and reply with more information if there is a question from the EPDP Team. Thanks.

Thomas Rickert (ISPCP): (09:46) Georgios - indemnification clauses in the joint controller agreement. Externally, you cannot get rid of liability vis a vis the data subjects.

Beth Bacon (RySG): (09:46) Thomas is offering a workable way forward that takes advantage of the work we've done while filling the fundamental gaps in the analysis that exist.

Rahul Gosain (GAC - ALT): (09:47) @Thomas - I would tend to agree with what you say- Externally we couldn't get rid of liability vis a vis the data subjects

Georgios Tselentis (GAC): (09:47) @Thomas ok that was my impression as well (you cannot get rid of liability)

Thomas Rickert (ISPCP): (09:47) And this is why we need to have good indemnification clauses and a clear definition of who is responsible for what

Lindsay Hamilton-Reid (RrSG Alternate): (09:47) Agreed Alan

Rahul Gosain (GAC - ALT): (09:48) More detail!

Alan Woods (RySG): (09:48) :) thanks Kurt ... shared purposes! :)

Thomas Rickert (ISPCP): (09:49) Hadia, I have a hard time understanding you

Julf Helsingius (NCSG): (09:50) Hadia, your mic is way too loud, it clips/distorts badly

Rahul Gosain (GAC - ALT): (09:51) @Margie agree with the first point

Thomas Rickert (ISPCP): (09:51) Margie, there will be points where the CPs will have to indemnify ICANN for their actions...

Daniel Halloran (ICANN Org Liaison -Legal): (09:51) @Margie -- thanks. We'll take that as a question for ICANN Org.

Lindsay Hamilton-Reid (RrSG Alternate): (09:52) I am not sure ICANN's lawyers would agree with the risk.

Margie Milam (BC): (09:52) yes will do

Thomas Rickert (ISPCP): (09:52) Just saying this is not against ICANN, but we need a fair reflection of who asks for what and who does what. Those parties should take responsibility.

Stephanie Perrin: (09:52) Why not ask contracted parties to come up with precise wording for the indemnification.

Marika Konings: (09:52) I currently have: Question for ICANN Org: Is indemnification provided by ICANN through a joint controller agreement an option? Please suggest edits if this does not accurately capture the question.

Rahul Gosain (GAC - ALT): (09:52) @Margie - Would that imply that ICANN indemnifies even in case they are not liable as per the Joint Controller agreement?

Hadia Elminiawi - ALAC: (09:53) would the responsibilities of the controllers be affected if one of the controllers does not belong to the union (in addition as I understand some processors would likely also be changed to controllers)

Stephanie Perrin: (09:53) (I guess we can kiss the rest of the auction proceeds money goodbye)

Thomas Rickert (ISPCP): (09:53) Hadia - union?

Georgios Tselentis (GAC): (09:53) +1 Mark +1 Margie I want to see some examples of those clauses

Margie Milam (BC): (09:53) Good question -- I think its in the case of Joint Controller, and also in areas where they are the sole controller

Thomas Rickert (ISPCP): (09:53) NO, Kurt. Not access discussion.

Hadia Elminiawi - ALAC: (09:54) member state law

Thomas Rickert (ISPCP): (09:54) We have liability issues in every aspect of what is happening here.

Rahul Gosain (GAC - ALT): (09:54) @Georgios- That makes two of us! But I suppose its upto this group to do that I guess?

Rahul Gosain (GAC - ALT): (09:54) @Thomas- I would assume so but I suppose ICANN wouldn't necessarily agree with that one

Brian King (IPC): (09:56) I support Thomas' approach

Hadia Elminiawi - ALAC: (09:57) @Thomas I agree with the concept and idea

Brian King (IPC): (09:57) I note that, until we go through the exercise Thomas suggests, ICANN is likely the only controller based on the legal definition of a controller

[https://urldefense.proofpoint.com/v2/url?u=https-3A_ec.europa.eu_info_law_law-2Dtopic_data-2Dprotection_reform_rules-2Dbusiness-2Dand-2Dorganisations_obligations_controller-2Dprocessor_what-2Ddata-2Dcontroller-2Dor-2Ddata-2Dprocessor-5Fen&d=DwlFaQ&c=FmY1u3PjP6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=k7uKdjSb7_ZjItyVqrCYHo_rKms9SFxlmbYEJqG-y9I&m=2eW2HuwOK7letxyPJQG29GUuudTRtEls0FbnDgcM-DU&s=VW7ZU-qTTVL3jXveBugLZM-0gu3qIXPe9sulh-ho8Y&e=\)](https://urldefense.proofpoint.com/v2/url?u=https-3A_ec.europa.eu_info_law_law-2Dtopic_data-2Dprotection_reform_rules-2Dbusiness-2Dand-2Dorganisations_obligations_controller-2Dprocessor_what-2Ddata-2Dcontroller-2Dor-2Ddata-2Dprocessor-5Fen&d=DwlFaQ&c=FmY1u3PjP6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=k7uKdjSb7_ZjItyVqrCYHo_rKms9SFxlmbYEJqG-y9I&m=2eW2HuwOK7letxyPJQG29GUuudTRtEls0FbnDgcM-DU&s=VW7ZU-qTTVL3jXveBugLZM-0gu3qIXPe9sulh-ho8Y&e=))

Brian King (IPC): (09:57) For many processing activities

Brian King (IPC): (09:58) So this exercise is prudent for the reasons Thomas and Diane stated

Brian King (IPC): (09:59) @ICANN/Daniel: if EPDP agrees on policy that requires ICANN to indemnify, would the ICANN legal team and Board oppose it?

Diane Plaut (IPC): (09:59) I am pleased to help, and pleased to help with the efforts to put forth a draft template for a proposed Joint Controller Agreement that will bring our work forward

Brian King (IPC): (09:59) Happy to have that taken away as an action item

Hadia Elminiawi - ALAC: (09:59) +1 Thomas on having input from someone from ICANN

Daniel Halloran (ICANN Org Liaison -Legal): (10:00) @Brian -- is that a proposed re-write to the question Marika circulated above? Thanks

Kurt Pritz: (10:00) @ Dan H - can someone from ICANN work with Thomas?

Alan Woods (RySG): (10:01) ahhh poop ... my audi bridge just threw me out!

Alan Woods (RySG): (10:01) audio

Brian King (IPC): (10:01) @Daniel: yes, I would pose the question that way

Brian King (IPC): (10:01) Thank you

Alan Woods (RySG): (10:01) thanks all!!!

Daniel Halloran (ICANN Org Liaison -Legal): (10:01) @Kurt/Thomas -- Yes, Trang and I are available to provide any info needed -- thanks.

Hadia Elminiawi - ALAC: (10:01) Thank you all bye

Amr Elsadr (NCSG): (10:01) Thanks all. Bye.

Julf Helsingius (NCSG): (10:01) Thanks all

Brian King (IPC): (10:01) Thanks all

Leon Sanchez: (10:01) thanks everyone

Rahul Gosain (GAC - ALT): (10:01) Thank You All! Thank You Kurt! Thanks TO Staff!

Rahul Gosain (GAC - ALT): (10:01) Bye All

Thomas Rickert (ISPCP): (10:02) Thanks Kurt and staff. Bye all.