Adobe Connect: 25

Alan Greenberg (ALAC) Hadia Elminiawi (ALAC)
Alex Deacon (IPC) Julf Helsingius (NCSG)
Amr Elsadr (NCSG) Kurt Pritz (Chair)

Ayden Férdeline (NCSG)

Ben Butler (SSAC)

Leon Sanchez (ICANN Board Liaison)

Lindsay Hamilton-Reid (RrSG Alternate)

Benedict Addis (SSAC) Marc Anderson (RySG)
Beth Bacon (RySG Alternate) Margie Milam (BC)
Chris Disspain (ICANN Board Liaison) Mark Svancarek (BC)
Chris Lewis-Evans (GAC Alternate) Matt Serlin (RrSG)

Diane Plaut (IPC) Rafik Dammak (GNSO Council Liaison)
Emily Taylor (RrSG) Sebastien Ducos (RySG Alternate)

Georgios Tselentis (GAC)

Stephanie Perrin (NCSG)

Thomas Rickert (ISPCP)

Guests:

None

On Audio Only:

None

Apologies:

Kavouss Arasteh (GAC) James Bladel (RrSG) Rahul Gosain (GAC) Alan Woods (RySG) Ashley Heineman (GAC) Kristina Rosette (RySG)

Audio Cast (FOR ALTERNATES AND OBSERVERS)

Peak: 7 joined

View Only Adobe Connect:

26 joined

Staff:

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

AC Chat:

Andrea Glandon: (11/16/2018 07:01) Welcome the EPDP Team Call #27 held on Friday, 16 November 2018 at 14:00 UTC.

Andrea Glandon: (07:01) Wiki Agenda Page: https://community.icann.org/x/7wfVBQ

Rafik Dammak (GNSO Council Liaison): (07:53) hello all

Ayden Férdeline (NCSG): (07:57) Hi all

Rafik Dammak (GNSO Council Liaison): (07:58) a way to spend a friday evening:)

Margie Milam (BC): (07:59) Happy Friday! Thomas Rickert (ISPCP): (08:01) Hi all!

Thomas Rickert (ISPCP): (08:03) All, I have shared initial reactions to ICANN's memo on our mailing list. Ayden Férdeline (NCSG): (08:03) Did the budget committee yesterday reach a decision re: location of our January face-to-face meeting?

Ayden Férdeline (NCSG): (08:05) thanks Kurt, good to know

Chris Disspain (ICANN Board Liaison): (08:05) Was that January 16 to 18 please?

Ayden Férdeline (NCSG): (08:05) it was initially announced as 16 to 18, but yesterday I heard 15 to 18 as the dates announced

Ayden Férdeline (NCSG): (08:06) so not sure which is correct Thomas Rickert (ISPCP): (08:06) What about legal support?

Terri Agnew: (08:06) finding the line

Rafik Dammak (GNSO Council Liaison): (08:07) it is from 16 to 18th January

Chris Disspain (ICANN Board Liaison): (08:07) thanks Rafik

Alan Greenberg (ALAC): (08:08) Has this version been sent out?

Alan Greenberg (ALAC): (08:08) The latest one I seem to have has a date of 14 on the top line.

Marika Konings: (08:09) @Alan - no this version was not circulated, but the only difference is that it highlights in green the comments discussed yesterday and in redline the notes / agreements from yesterday's meeting

Marc Anderson (RySG): (08:10) What number are we looking at?

Kurt Pritz: (08:10) section 3 - letter k

Kurt Pritz: (08:12) Recommendations 20 + 21

Marika Konings: (08:14) a recommendation forms a vehicle for the Council to consider and act

Marika Konings: (08:15) and take subsequent action, as needed

Marika Konings: (08:15) one way to distinguish could be to make sure that each recommendation clearly includes to whom it is directed?

Marika Konings: (08:16) For those interested, the PDP Manual includes a list (illustrative) of types of recommendations a PDP Team can make

Marika Konings: (08:19) As a result, the BC, supported by the IPC suggested that disclosure pre-filing to complainants should be added to the processing activities for the purpose of coordinating, operationalizing and facilitating policies for resolution of disputes regarding or relating to the registration of domain names (as opposed to the use of such domain names), namely, the UDRP, URS, PDDRP, RRDRP and future-developed domain name registration-related dispute procedures for which it is established that the processing of personal data is necessary, which may also trigger a change to the UDRP as disclosure pre-filing is currently not a part of the UDRP. However, this proposed addition was not supported by others who pointed out that in the case of privacy/proxy registrations complainants never have access to registrant information pre-filing. Similarly, concerns were expressed about how this could be implemented in practice as it could result in information being disclosed to anyone claiming to be interested in filing a UDRP comp

Marika Konings: (08:20) compliant, without any obligation to follow this through.

Matt Serlin (RrSG): (08:20) A side by side would be ideal

Matt Serlin (RrSG): (08:20) I think our concern is that just the intent to file a UDRP shouldn't be the standard to get access to the non-public data

Marika Konings: (08:26) Item j

Chris Lewis-Evans (GAC): (08:29) Appendix D 1.1 is where this is from within temp spec

Chris Lewis-Evans (GAC): (08:29) ...i think

Margie Milam (BC): (08:31) I agree with Beth - doesnt need to be more specific

Marika Konings: (08:31) and to clarify, this is actually not a policy recommendation but more an observation

Marika Konings: (08:32) so line 1736-1742 in the current pdf version

Marika Konings: (08:32) it aims to reflect the discussion on this item, but if it is confusing, it can be deleted?

Margie Milam (BC): (08:33) Marikca -- can you give us the link to the current PDF

Marika Konings: (08:34) https://urldefense.proofpoint.com/v2/url?u=https-

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Margie Milam (BC): (08:34) thank you!

Marika Konings: (08:34) this is the redline version. At the request of the Team we also posted a clean version, but obviously the line numbers will be different in that one

Emily Taylor (RrSG): (08:37) Thank you Kurt!

Alan Greenberg (ALAC): (08:38) Marika, that is the list of input not the report.

Alex Deacon - IPC: (08:38) FWIW it is not at all clear what we just decided to do (or not do). Feeling quite lost this morning.

Marika Konings: (08:39) sorry, let me get the correct link.

Marika Konings: (08:39) @Alex - I think we are deleting?

Stephanie Perrin (NCSG): (08:39) So glad to hear you say that ALex. I am lost.

Matt Serlin (RrSG): (08:39) I'm concerned that if we direct Council to act on certain other policies, are we sure that every potentially impacted policy has been reviewed and included in what we recommend to them?

Marika Konings: (08:39) This should be the correct

link: https://urldefense.proofpoint.com/v2/url?u=https-3A drive.google.com file d 1F-5FfQ5bEHAS543TdLOmDKxXpcJFF1qQy-

<u>5F_view&d=DwlFaQ&c=FmY1u3PJp6wrcrwll3mSVzgfkbPSS6sJms7xcl4l5cM&r=k7uKdjSb7_ZjltyVqrCYHo</u>rKms9SFxlmbYEJqG-v9I&m=bidCoa2so-

<u>kQfUpetAouNSJNgRB4Hmo3ZNJ8PHOLhb8&s=g3B3N_88zjSl05dfrdWW8jqbSglW1hq-ZGQ5kXq2aM4&e=</u> Beth Bacon (RySG): (08:40) not deleting n, but categorizing it like 3.k.

Mark Svancarek (BC): (08:40) I think we are all fried this morning; I thought it was just me!

Amr Elsadr (NCSG): (08:40) Observers asking that the document be scrolled by the hosts to the relevant section under discussion.

Beth Bacon (RySG): (08:40) +1 Amr. Very hard to follow in the alternate room (she says from experience)

Chris Lewis-Evans (GAC): (08:42) +1 agreed also from experience

Marika Konings: (08:42) this is now recommendation #21

Beth Bacon (RySG): (08:43) My understanding is that we we are just categorizing atre categorizing it as impacting other policies and authors of those policies should be notified. As we did for 3.k

Marika Konings: (08:44) maybe focus on the language and less on the numbers :-)

Alex Deacon - IPC: (08:44) I had the same confusion regarding the duscssion we had for item j.

Margie Milam (BC): (08:46) I am so lost too

Alex Deacon - IPC: (08:46) agree having marika scroll will help.

Marika Konings: (08:47) Note that the IRTP review has just commenced, as Marc notes.

Marika Konings: (08:47) I believe the review itself also touches upon GDRP and asks for input on the impact

Marika Konings: (08:49) Note we are still on item n, which is now preliminary recommendation #21 in the latest draft of the Initial Report (https://urldefense.proofpoint.com/v2/url?u=https-

3A drive.google.com file d 1F-5FfQ5bEHAS543TdLOmDKxXpcJFF1qQy-

<u>5F_view&d=DwIFaQ&c=FmY1u3PJp6wrcrwll3mSVzgfkbPSS6sJms7xcl4l5cM&r=k7uKdjSb7_ZjltyVqrCYHo</u>rKms9SFxlmbYEJqG-y9I&m=bidCoa2so-

<u>kQfUpetAouNSJNgRB4Hmo3ZNJ8PHOLhb8&s=g3B3N_88zjSl05dfrdWW8jqbSglW1hq-</u>ZGQ5kXq2aM4&e=)

Marc Anderson (RySG): (08:49) https://urldefense.proofpoint.com/v2/url?u=https-

3A www.icann.org news announcement-2D2018-2D11-2D14-

<u>2Den&d=DwlFaQ&c=FmY1u3PJp6wrcrwll3mSVzgfkbPSS6sJms7xcl4l5cM&r=k7uKdjSb7_ZjltyVqrCYHo_rK_ms9SFxlmbYEJqG-y9l&m=bidCoa2so-</u>

kQfUpetAouNSJNgRB4Hmo3ZNJ8PHOLhb8&s=fSCk dLcPes8 sxNnkBziLTpW5lf4qtU9K9d-0UCHM8&e=

Marc Anderson (RySG): (08:50) link to IRTP notice I referenced

Marika Konings: (08:51) any members are of course encouraged to provide input to the public comment forum

Thomas Rickert (ISPCP): (08:52) Just as an aside. We are increasing the chances of the Monday meeting being necessary by the minute :-)

Hadia Elminiawi - ALAC: (08:53) Hi all, I was only on the audio now I am both

Margie Milam (BC): (08:53) Maybe we should have directed questions for the public comment

Alan Greenberg (ALAC): (08:53) @Thomas, we are quickly moving towards an ALL_DAY Monday meeting.

Marika Konings: (08:53) Based on the discussions, it seemed that registrars and others indicated that things for the transfer policy under the temp spec are working and not in a major crisis, but that there is a need for an overall review, which is already in the works. So would energy be best spent for people to provide input to the public comment forum and get involved in the review process?

Stephanie Perrin (NCSG): (08:55) I support Margie's request to talk about the memo

Benedict Addis - SSAC: (08:57) @Marika sounds reasonable

Marika Konings: (08:57) we are now on items t and u - preliminary recommendation #3

Hadia Elminiawi - ALAC: (08:58) @Margie I agree with you -

Diane Plaut (IPC): (08:58) I also agree that we should address the memo

Matt Serlin (RrSG): (08:59) +1 Emily

Beth Bacon (RySG): (08:59) Emily - that is a good, practical approach

Amr Elsadr (NCSG): (09:00) The compromise language being the original language under t and u?

Amr Elsadr (NCSG): (09:00) So rec#3, as is currently worded?

Matt Serlin (RrSG): (09:01) I believe that is correct Amr yes

Amr Elsadr (NCSG): (09:01) Cool. Then sounds good to me too. Thanks, Matt.

Matt Serlin (RrSG): (09:02) This feels like an issue that if we open it back up from what is in the draft report now, it could drag out and we'd risk publishing by our stated goal

Benedict Addis - SSAC: (09:02) OK, fair

Emily Taylor (RrSG): (09:03) I agree with Matt. The contracts carry substantial provisions on data accuracy. This is compromise language

Emily Taylor (RrSG): (09:03) Correct @AlanG

Benedict Addis - SSAC: (09:03) OK, understood.

Matt Serlin (RrSG): (09:03) Correct Alan G

Ayden Férdeline (NCSG): (09:04) I support Margie's earlier proposal to discuss the memo

Mark Svancarek (BC): (09:04) "parking lot" is a term of art :)

Julf Helsingius (NCSG): (09:05) Ouch, Hadia, your mic level is back to way too loud

Hadia Elminiawi - ALAC: (09:06) ok that is surely fine Hadia Elminiawi - ALAC: (09:06) I'll try to adjust my mic

Julf Helsingius (NCSG): (09:07) Hadia: it was great the last couple of calls

Alex Deacon - IPC: (09:07) what is the new recommendation number in the latest report?

Marika Konings: (09:07) Note that is now recommendation #12 in the latest draft

Marika Konings: (09:08) lines 1074-1080

Alex Deacon - IPC: (09:08) thanks

Hadia Elminiawi - ALAC: (09:08) Thanks julf - I'll try to adjust

Thomas Rickert (ISPCP): (09:08) The retention periods must be synchronized for contracted parties and escrow agents

Thomas Rickert (ISPCP): (09:08) For DRPs and ICANN they can differ

Georgios Tselentis (GAC): (09:11) but we have Dan with us!

Alan Greenberg (ALAC): (09:11) @Thomas, why sync between CP and escrow agents? I would think that retention for Escrow agents might be a lot less.

Ayden Férdeline (NCSG): (09:12) a thank you email for that memo? thank whom?

Mark Svancarek (BC): (09:19) Is "independent controller" a defined term? I think this is the first I have seen it

Mark Svancarek (BC): (09:20) (defined externally to this memo)

Amr Elsadr (NCSG): (09:21) @Mark: At the risk of being wrong, my assumption is that "independent controller" is either referring to a sole controller or a co-controller, but not a joint controller? But you know what they say about assumptions. ;-)

Ayden Férdeline (NCSG): (09:22) I think it might be distinct from a sole controller, i.e. an attorney for their client could be an independent controller when representing a client and deciding what information to release or not to another party

Mark Svancarek (BC): (09:22) Seems I am not the only one who has previously encountered this recently coined term

Amr Elsadr (NCSG): (09:22) :-)

Mark Svancarek (BC): (09:22) "who has NOT encountered"

Alan Greenberg (ALAC): (09:24) Thanks Dan, those were all thoughtful and useful comments.

Amr Elsadr (NCSG): (09:27) Deal with the memo/feedback as we would any other public comment submitted. My 2 cents.

Daniel Halloran (ICANN Org Liaison -Legal): (09:27) Thank you Alan

Hadia Elminiawi - ALAC: (09:28) Thanks Dan and Thomas @Kurt for sure we need to get this right

Margie Milam (BC): (09:28) + I Mark

Ayden Férdeline (NCSG): (09:28) +1 Mark S

Matt Serlin (RrSG): (09:28) 100% agree with Mark here...active ICANN org participation would aid us greatly

Emily Taylor (RrSG): (09:29) Just wanted to 100% support what Mark Sv just said.

Margie Milam (BC): (09:30) Our Board liaisons should be active as well

Hadia Elminiawi - ALAC: (09:31) surely ICANN's active participation in this regard is essential

Julf Helsingius (NCSG): (09:34) My apologies, but have to drop off

Marc Anderson (RySG): (09:38) I see Dan's hand is up at the end of the que. It might make sense to ask him to jump up in the Que and respond to Thomas.

Hadia Elminiawi - ALAC: (09:39) bye julf

Benedict Addis - SSAC: (09:39) Marc I'm going to offer Dan my spot

Marc Anderson (RySG): (09:39):)

Ayden Férdeline (NCSG): (09:41) thank you @Thomas, excellent analysis

Diane Plaut (IPC): (09:42) Yes, of course

Margie Milam (BC): (09:44) agree with Benedicts observation - its sole controllorship or joint -- Hadia Elminiawi - ALAC: (09:44) I also see the options as joint controller or ICANN sole controller

Thomas Rickert (ISPCP): (09:46) I guess we asked .a couple of times if ICANN would be willing to enter into a JCA

Margie Milam (BC): (09:47) is the phrase "independent controller" in the Temp Spec?

Hadia Elminiawi - ALAC: (09:47) prior to Thomas proposal's I was under the impression that ICANN was the sole controller - based on the table in appendix C

Thomas Rickert (ISPCP): (09:47) I could not find the term independent controller in the TS

Benedict Addis - SSAC: (09:48) Hadia in my reading, the Appendix C table implies joint controllership but it was never stated clearly.

Hadia Elminiawi - ALAC: (09:49) as I recall the only reference to the roles is in appendix C - that mentions the processors and controllers

Hadia Elminiawi - ALAC: (09:50) @Benedict it is a little bit confusing -

Chris Lewis-Evans (GAC): (09:50) @Margie not independant nor joint specfically

Hadia Elminiawi - ALAC: (09:52) @Benedict according the appendix it is not an obvious JCA - but could be interpreted this way

Thomas Rickert (ISPCP): (09:54) Unfortunately, that is a German legal commentary written by Sydow: SydowErfasst sind damit potentiell alle Formen kumulativen Zusammenwirkens, soweit diese die Relevanzschwelle einer Mitentscheidung über die Zielrichtung und die Modalitäten der Verarbeitung erreichen. Diese "Entscheidungshöhe" ist zu bejahen, wenn die Datenverarbeitung ohne den direktiven Input einer Stelle potentiell andersartig gestaltet worden wäre. Maßgeblich ist also nicht eine tatsächliche Mitwirkung bei einzelnen Datenverarbeitungen, sondern bereits deren Veranlassung oder direktive Mitgestaltung – insbesondere als Auftraggeber einer Datenverarbeitung – kann verantwortlichkeitsbegründend sein. Par. 1 p. 1 jointly identifies those responsible only in that two or more responsible parties jointly determine the purposes and the means of processing. According to Art. 4 No. 7 GDPR, constellations in which special legal norms determine these determinations must be equated. Thus, potentially all forms of cumulative interaction a

Benedict Addis - SSAC: (09:54) What does "means" mean in this context?

Stephanie Perrin (NCSG): (09:54) We will have to go over the transcripts to respond to all the detail that is being raised here. My question, just in case I don't get a chances to raise it, is how can we release an interim report with no clarity on this very fundamental question? What will be included in the report?

Thomas Rickert (ISPCP): (09:55) Thus, potentially all forms of cumulative interaction are included insofar as they reach the relevance threshold of a codecision on the direction and modalities of the processing. This "decision height" must be answered in the affirmative if the data processing would have been potentially different without the directive input of a body. The decisive factor is therefore not an actual participation in individual data processing, but already their instigation or direct co-creation - in particular as a customer of a data processing - can be responsible for the basis of responsibility.

Thomas Rickert (ISPCP): (09:55) The EN part is google translate.

Benedict Addis - SSAC: (09:57) Google Translate via Cantonese, presumably

Daniel Halloran (ICANN Org Liaison -Legal): (09:58) Thank you Thomas

Thomas Rickert (ISPCP): (09:58) For those who want to find the legal commantary (probably via their lawyers :-)) Albert Ingold in Sydow, Europäische Datenschutzgrundverordnung2. Auflage 2018 Rn. 4

Daniel Halloran (ICANN Org Liaison -Legal): (10:00) Danke, Thomas

Hadia Elminiawi - ALAC: (10:01) @Thomas thanks for the reference

Trang Nguyen (ICANN Org Liaison): (10:05) @Emily, others, thank you. We've heard loud and clear that you want to hear from ICANN org liaisons more. We'll try to do that in way that does not step over the line of policy making, which is the role of the community and not of ICANN. We hear you that the desired outcome is one where the policy recommendation is implementable so we will continue to raise any implementation issues/concerns to inform deliberations.

Daniel Halloran (ICANN Org Liaison -Legal): (10:06) Thank you Mark S for the constructive feedback. I hear you. Understood.

Mark Svancarek (BC): (10:07) Thank you, Dan

Matt Serlin (RrSG): (10:08) Thanks Trang and Dan for listening and taking onboard comments from the team

Margie Milam (BC): (10:08) Has ICANN done a DPIA?

Daniel Halloran (ICANN Org Liaison -Legal): (10:09) @Margie -- no, we have not done a DPIA. I believe we've given a written answer on this previously?

Margie Milam (BC): (10:09) Thanks Dan - sorry I missed it

Trang Nguyen (ICANN Org Liaison): (10:10) @Margie, the question was: "Why hasn't a Data Protection Impact Assessment been carried out to clarify data flows and ICANN's relationship with the data subject in light of its acknowledged role as a joint controller and Article 35 of the GDPR?"

Amr Elsadr (NCSG): (10:10) @Thomas: +1 on proceeding as originally planned.

Trang Nguyen (ICANN Org Liaison): (10:10) Our response was: "This question was also asked during the Data Protection/Privacy Update Webinar hosted by ICANN org on 8 October 2018. John Jeffrey, ICANN's General Counsel and Secretary provided the following response: "This is something that has been considered since the very beginning. One of the issues is when to do that in a way that is most timely and useful and how to do that. We continue to evolve the thinking of how the interpretation of GDPR applies to WHOIS. We have a number of questions which have been addressed directly to the DPAs and the EDPB and we've have an ongoing discussion with the EC about how to interpret the GDPR. We believe that those are a better format at this point than doing the assessment, but we continue to evaluate whether that assessment would be the right thing to do and when."The presentation for the webinar is posted here, and the Adobe Connect recording is here. The question and response start at 0:27:00 in the Adobe Connect recording."

Diane Plaut (IPC): (10:11) Agreed

Chris Lewis-Evans (GAC): (10:11) My (limited) reading the difference between sole and independent is withe a sole controller they are they only party with access to the data an independent controller acts independently but with a data set that is shared

Margie Milam (BC): (10:11) yes -- it seems that a DPIA would be a pre-requisite to make these fact decisions

Chris Lewis-Evans (GAC): (10:12) be good to get clarity though

Marc Anderson (RySG): (10:12) you don't need acess to the data to be a conrolloer

Chris Lewis-Evans (GAC): (10:13) sorry not just access or determine the purposes of processing to a single data set

Diane Plaut (IPC): (10:13) Both Thomas and I will be in Brussels for the Privacy IAPP Summit

Beth Bacon (RySG): (10:13) So will Alan and I

Thomas Rickert (ISPCP): (10:14) Small correction - I would only come to Brussels for a meeting. I have not planned to be at IAPP unfortunately.

Daniel Halloran (ICANN Org Liaison -Legal): (10:15) @Diane/Beth/Alan/Thomas -- I will be at IAPP too. I look forward to seeing you there.

Stephanie Perrin (NCSG): (10:15) Will there be funding available for those of us who will not be in Brussels for the IAPP meeting?

Chris Lewis-Evans (GAC): (10:15) Got to drop off Adobe, thanks all

Stephanie Perrin (NCSG): (10:17) IS ICANN.org considering doing a DPIA, given the need for them to sort out their role?

Marc Anderson (RySG): (10:17) please provide red-line and clean versions when you posted the updated document

Diane Plaut (IPC): (10:18) Please do via email

Hadia Elminiawi - ALAC: (10:18) good creation trhough

Hadia Elminiawi - ALAC: (10:18) though

Matt Serlin (RrSG): (10:19) i've had to drop...have a good weekend all

Trang Nguyen (ICANN Org Liaison): (10:20) @Stephanie, we've taken note of your question regarding DPIA and will provide a response via the mailing list.

Diane Plaut (IPC): (10:21) I must drop off. Thank you all.

Ayden Férdeline (NCSG): (10:22) I sent an email to the list two weeks ago with a requested edit for the initial report; I hope this email is captured in the next draft. I will be checking... thanks!

Marika Konings: (10:23) @Ayden - can you confirm what that edit related to?

Hadia Elminiawi - ALAC: (10:23) Thank you all - bye Rafik Dammak (GNSO Council Liaison): (10:23) thanks all

Leon Sanchez (ICANN Board Liaison): (10:23) thanks everyone

Thomas Rickert (ISPCP): (10:23) Bye all

Benedict Addis - SSAC: (10:23) Ayden, can we perhaps avoid language like "I will be checking"? Ayden Férdeline (NCSG): (10:23) @Marika - https://mm.icann.org/pipermail/gnso-epdp-team/2018-November/000731.html

Ayden Férdeline (NCSG): (10:23) thanks

Ayden Férdeline (NCSG): (10:23) and no Benedict, don't correct my language