

Adobe Connect: 23

Alan Greenberg (ALAC)	Hadia Elminiawi (ALAC)
Alan Woods (RySG)	James Bladel (RrSG)
Alex Deacon (IPC)	Julf Helsingius (NCSG)
Amr Elsadr (NCSG)	Kristina Rosette (RySG)
Ashley Heineman (GAC)	Kurt Pritz (Chair)
Ayden Férdeline (NCSG)	Leon Sanchez (ICANN Board Liaison)
Ben Butler (SSAC)	Marc Anderson (RySG)
Benedict Addis (SSAC)	Margie Milam (BC)
Diane Plaut (IPC)	Mark Svancarek (BC)
Emily Taylor (RrSG)	Matt Serlin (RrSG)
Farzaneh Badii (NCSG)	Rafik Dammak (GNSO Council Liaison)
Georgios Tselentis(GAC)	

Audio Only:

None

Apologies:

Kavouss Arasteh (GAC)
Thomas Rickert (ISPCP)

Audio Cast (FOR ALTERNATES AND OBSERVERS)

Peak: 11 joined

View Only Adobe Connect:

27 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: (12/13/2018 07:07) Welcome to the EPDP Team Call #34 held on Thursday, 13 December 2018 at 14:00 UTC.

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

Leon Sanchez: (08:01) Hello everyone

Rafik Dammak (GNSO Council Liaison): (08:02) hi all

Ben Butler (SSAC): (08:02) Greetings all

Alan Woods (Rysg): (08:03) Hey Terri and all Kristina Rosette is on the phone and is having issues in connecting but is listening! :)

Terri Agnew: (08:03) Thanks for this Alan - we have this noted

Berry Cobb: (08:04) PCST = Project Cost Support Team

Hadia Elminiawi (ALAC): (08:05) hello all

Ashley Heineman (GAC): (08:10) Can it be an alternate? I believe our only lawyer is Lauren.

Berry Cobb: (08:10) Yes, Alternates allowed.

Alex Deacon - IPC: (08:11) before I forget - can we add "meeting schedule between now and the end of the year" to the last agenda item?

Marc Anderson (RySG): (08:14) +1 Alex - can we please confirm the meeting schedule

Ashley Heineman (GAC): (08:15) I really like that the requests will first be considered in light of guidance we have already received (particularly from the EDPB).

Ashley Heineman (GAC): (08:16) I should have been a lawyer.

Berry Cobb: (08:17) Will do. Thomas also has some input in that regard.

Hadia Elminiawi (ALAC): (08:18) Thomas should be the chair

Berry Cobb: (08:18) Key for the EPDP is to focus on the actual questions/issues that require legal advice.

Marika Konings: (08:18) These are the meetings that are planned so far. Note that additional meetings of the to be constituted legal committee may need to be added: Meeting #34 – 13 December 2018, Meeting #35 – 18 December 2018, Meeting #36 – 20 December 2018, Meeting #37 – 3 January 2019, Meeting #38 – 8 January 2019, Meeting #39 – 10 January 2019, F2F Meeting – 16 – 18 January. 2019

Alex Deacon - IPC: (08:18) Thanks Marika!

Marika Konings: (08:18) Also, additional meetings in the January timeframe may be needed depending on the # of comments received.

Berry Cobb: (08:19) We will send out an email with this deck asking for one rep from each group. An email list will be setup. Likely first call at the beginning of Jan.

Ashley Heineman (GAC): (08:19) +1 Emily.

Mark Svancarek (BC): (08:24) +1 James

Diane Plaut (IPC): (08:25) +1 James

Ashley Heineman (GAC): (08:25) To James point, I assume that we aren't going to go back and have the counsel look at work we have already principally agreed to.

James Bladel (RrSG): (08:25) Thanks, Kurt. I disagree. The hardest part is getting everyone to accept the answers, once provided.

Ashley Heineman (GAC): (08:26) Amen.

Ashley Heineman (GAC): (08:27) Hopefully we will all be professional and respect guidance we receive and use it constructively.

Matt Serlin (RrSG): (08:27) +1 Ashley

James Bladel (RrSG): (08:27) +1 Kurt. We absolutely need to continue to seek the guidance.

Hadia Elminiawi (ALAC): (08:28) Thank you Kurt for your answer

Hadia Elminiawi (ALAC): (08:28) +1 ashley

Hadia Elminiawi (ALAC): (08:28) +1 asley

Emily Taylor (RrSG): (08:30) To Mark Sv's point, does this imply that we formulate policy recommendations first, and then seek advice on them?

Alan Woods (Rysg): (08:31) Thanks berry for the work on this! :)

James Bladel (RrSG): (08:32) Yep, thanks Berry

Emily Taylor (RrSG): (08:32) Thanks Berry

Hadia Elminiawi (ALAC): (08:46) +1 Margie clearly defining the roles is necessary for this purpose

Ashley Heineman (GAC): (08:47) The US has looked at this issue and was previously made aware of this guidance. It makes things clearer for registries in terms of my TLD doesn't target Europeans, but it still gets pretty complicated at the registrar level with respect to their marketing of domains.

Diane Plaut (IPC): (08:51) Agreed James, thank you Amr.

Emily Taylor (RrSG): (08:52) Agree, @Ashley

James Bladel (RrSG): (08:52) We also don't want to create competitive disadvantages between Registrars, where some have a leg up for their local market

James Bladel (RrSG): (08:52) Or blocking/keeping some customers away

Mark Svancarek (BC): (08:53) @James, can yo clarify what advantage a registrar might have relative to GDPR in a local market?

James Bladel (RrSG): (08:56) @Mark - if we create requirements based on geographies, then some providers might incur extra costs serving a particular market vs. domestic providers. So there would be the unintended consequence of creating barriers to entry for some markets.

Amr Elsadr (NCSG): (08:57) Identifying whether ICANN, as a controller that pretty much covers most (if not all processing activities), has relevant stable establishments in the EU might be a more efficient way to figuring this out. If it does, and GDPR is applicable to processing activities associated with the establishment(s) might eliminate the necessity of finding out whether each CP has an establishment, or not.

Mark Svancarek (BC): (08:57) @James, I still don't understand - all companies would incur those same costs to address that market - no advantage

Mark Svancarek (BC): (08:57) incur

Ashley Heineman (GAC): (08:57) Let's use a non-European ccTLD as an example. One that has a nexus requirement. One could easily argue that the ccTLD doesn't target Europeans. However, there are registrars that market the ccTLD domains to Europeans because there are some potential European registrants that can prove a US nexus. So... even though the ccTLD isn't "targeting" Europeans, the registrar marketing (and also potentially based in Europe) are.

Margie Milam (BC): (08:58) There are always different costs depending upon regulations that apply --- that's just the reality

Amr Elsadr (NCSG): (08:58) Actually, if ICANN (as a controller) does have stable establishments relevant to processing activities of domain name registrations, then the targeting criteria would be moot.

Margie Milam (BC): (08:59) Emily -- I don't think that's what guidelines say

Emily Taylor (RrSG): (09:00) Thanks Margie - do you have a specific section of the guidelines in mind?

Alan Greenberg (ALAC): (09:02) Sorry for missing first 1/2 of meeting.

Alan Greenberg (ALAC): (09:02) travel delays

Margie Milam (BC): (09:03) agree with the need for further clarity

Hadia Elminiawi (ALAC): (09:04) @amr thank you for your answer I am not an expert either however this is not how I read it

Hadia Elminiawi (ALAC): (09:04) Hi Alan

Amr Elsadr (NCSG): (09:04) @Hadia: How did you read it?

Amr Elsadr (NCSG): (09:05) I mean, specifically, concerning monitoring behavior concerning geo-localisation?

James Bladel (RrSG): (09:07) Agree Kurt. This isn't really a legal question.

Amr Elsadr (NCSG): (09:07) If anything, I believe these guidelines have made clear that the possibility of developing a rules engine to manage this would be infinitely complicated!!

Hadia Elminiawi (ALAC): (09:09) @Amr this is different than companies trying to track the location of the users - there is no attempt here to track the location of the registrant

Amr Elsadr (NCSG): (09:09) It would make more sense to me to recommend a uniform policy that protects the rights of data subjects, and provides coverage to ICANN and its CPs.

Mark Svancarek (BC): (09:09) @Amr - you should see the rules engine that turns Windows features on and off depending on the CD Key you input - it's capable of extreme granularity, but the design is actually quite straightforward

James Bladel (RrSG): (09:10) I think i lost audi

Amr Elsadr (NCSG): (09:10) @Hadia: Requiring registrants to provide details of their physical address, and using this data for correspondence qualifies as tracking registrant location to me.

Amr Elsadr (NCSG): (09:13) @Mark: I'll take your word for it. I'm no expert on that either. :-)

Mark Svancarek (BC): (09:13) :)

Diane Plaut (IPC): (09:15) Margie - absolutely agree, of course, thank you for noting the cost to brand owners. There are costs to all parties involved.

James Bladel (RrSG): (09:15) costs and risks.

Mark Svancarek (BC): (09:16) we hear you

Hadia Elminiawi (ALAC): (09:17) @Amr No it does not qualify as "tracking registrant location" if the registrant moves to another location and keeps his same (old) correspondence address and the registrar can still reach him through this address, the registrar will have no issue with this - registrars do not need to track the location of the registrants

Amr Elsadr (NCSG): (09:17) Legal advice on this would be helpful, imo. If only to confirm our understanding of the guidelines.

Amr Elsadr (NCSG): (09:17) @Hadia: You seem to be very sure of yourself on this. I don't claim the same level of certainty you seem to have.

Margie Milam (BC): (09:18) +1 Alan

Alan Greenberg (ALAC): (09:21) If one were to put rules in place (as Kurt is describing), gaming to get in the GDPR pool would have to be carefully handled.

Margie Milam (BC): (09:21) I am not sure registrants would choose their registrar based on GDPR

Amr Elsadr (NCSG): (09:22) I certainly would, Margie. Would be glad to stop paying P/P fees.

Margie Milam (BC): (09:22) there are some registrars that dont charge for that

Hadia Elminiawi (ALAC): (09:22) @kurt what you just described makes sence if well implemented

Marika Konings: (09:23) Please note that the EPDP Team Initial Report is currently silent about the geographic application of the policy recommendations. The Temp Spec only applies geographic basis in relation the requirements for redaction, all other requirements apply to all contracted parties. If the EPDP Team does not distinguish between who what applies to in the Final Report, it will be the assumption for implementation that the policy recommendations apply to all contracted parties, like is the case for other consensus policies.

Alan Woods (Rysg): (09:27) So how does this conversation affect our current task. Is the temp spec as written, allow ICANN and the CPs to be compliant with Data protection legislation? yes. done move on. if we want to create a new system with lovely rule engines... recommend a future policy creation. In fact what Margie is saying right now, and we have been sayin for a long tome.

Alan Woods (Rysg): (09:27) *time

Matt Serlin (RrSG): (09:29) +1 Emily

Kristina Rosette (RySG): (09:29) +1 Emily. Doesn't seem to be enough support for a "rules engine recommendation" to start drafting one.

James Bladel (RrSG): (09:30) Who is going to create this Rules Engine? ICANN? Can everybody use it? Is it free? Will it be updated to reflect changing laws? Do we all have to use the same one?

Emily Taylor (RrSG): (09:31) Thanks Kurt

Margie Milam (BC): (09:31) Good questions - ICANN should develop it, keep it maintained & up to date

Matt Serlin (RrSG): (09:32) So our recommendation would be ICANN create, roll out and maintain this rules engine?

Matt Serlin (RrSG): (09:32) Be curious as to what ICANN org would think about that...

Amr Elsadr (NCSG): (09:33) @Alan: +1

Mark Svancarek (BC): (09:33) @James - my proposal (FWIW) would be: created by TBD; source code and binaries submitted to open source; data driven (rules are in certs; changing law = adding/deleting certs; multiple certs coexist); makes sense to all use the same source code but not required

Kristina Rosette (RySG): (09:33) Where does the \$ for such a rules engine come from?

Amr Elsadr (NCSG): (09:34) @Kristina: From CPs, who get them from RNHs.

Alan Woods (Rysg): (09:35) Margie is there a law out there that says we MUST differentiate? the my point remains valid.

Mark Svancarek (BC): (09:36) @Alan If all local laws are subsets of GDPR seems no need to differentiate; if some local laws are intersections, rather than subsets, then it is unavoidable

James Bladel (RrSG): (09:37) (from the people you brought you the Trademark Clearinghouse and Digital Archery).

James Bladel (RrSG): (09:37) SOrry, cheap joke at ICANN's expense. ;)

Hadia Elminiawi (ALAC): (09:38) @Alan this group was chartered to bring the whois registration data to compliance with the GDPR while , while maintaining the existing WHOIS system to the greatest extent possible

Terri Agnew: (09:40) finding the line

Diane Plaut (IPC): (09:41) I will volunteer with Stephanie

Hadia Elminiawi (ALAC): (09:41) @marika maybe we can take this to the mailing list

Marika Konings: (09:42) @Hadia - yes, we can start a mailing list discussion on this topic

Diane Plaut (IPC): (09:42) Point, well taken, but pleased to step in if needed.

Alan Woods (Rysg): (09:43) Sorry Marika, it's not a I dont wish to help, it's simply a capacity issue!

Alex Deacon - IPC: (09:43) It seems like a lot of work to me....i'd like to better understand what needs to happen to determine the cycles needed to put into it.

Marika Konings: (09:44) if the EPDP Team is willing to brainstorm on the mailing list, staff could try to write this up.

Hadia Elminiawi (ALAC): (09:45) @marika that sounds good - brainstorm on the mailing list

Marika Konings: (09:45) correct, objective of this section is policy impact analysis and a set of metrics to measure the effectiveness of the policy change.

Emily Taylor (RrSG): (09:45) +1 Marc

Marika Konings: (09:46) per the charter, this is expected to be included in the Final Report

Emily Taylor (RrSG): (09:46) Not sure how we can conduct an impact analysis without having consensus policy recommendations

Emily Taylor (RrSG): (09:46) Sure - but once the final report is done, hopefully we will have some recommendations that we actually have formulated and agree on

Margie Milam (BC): (09:47) +1 Marc

Kristina Rosette (RySG): (09:50) Apologies, but I have to drop for another meeting. Talk to everyone on Tuesday. Have a good weekend.

Hadia Elminiawi (ALAC): (09:51) lets take it to the mailing list and start brainstorm

James Bladel (RrSG): (09:52) Thanks, all.

James Bladel (RrSG): (09:52) Bye

Rafik Dammak (GNSO Council Liaison): (09:52) thanks all

Marc Anderson (RySG): (09:52) thanks all

Julf Helsingius (NCSG): (09:52) Thanks everyone!

Amr Elsadr (NCSG): (09:52) Thanks all. Bye.

Mark Svancarek (BC): (09:52) bye thx

Hadia Elminiawi (ALAC): (09:53) Thank youall bye

