

## **ALAC Draft statement on GDPR and UAM.**

### **Comments from Christopher Wilkinson**

#### **General**

The draft paper brings forward some interesting arguments and a useful perspective on certain aspects of ICANN's provisional UAM position. It is not clear how these aspects relate to the on-going work in the other current ICANN fora, notably the EPDR.

Although this draft is rather long for the purpose that it serves, it helps to relate the eventual ALAC position to the ICANN interim proposals. Here it would be helpful for a start to show clearly that the different fonts and colours that are used carry distinct meanings. Thus, it is only the paragraphs that appear in *italics* that constitute the proposed ALAC statement. Correct?

At several junctures in the draft, the text reads rather more like a defense of the IPR interest in WHOIS as expounded by the IPC constituency rather than a draft ALAC statement on behalf of the At Large community and Internet users, world wide.

I do not share the implicit presumption that there is some sort of co-incidence between trademark rights and consumer protection. Trademark protection is primarily about maintaining prices for branded products.

Insofar as the IPC wishes to make the case for an open Whois, they are of course free to do so, but I think that is not an appropriate line for ALAC to take.

#### **Third party access**

Specifically, the draft refers several times to access to data by third parties who would become 'accredited users'. Who are they going to be? How shall they be defined, world-wide? Who will accredit them?

Thus, we have 'intellectual property lawyers' and 'accredited parties' (p.2). Later, (p.3) we have 'a finite list of types of third parties ... [which] should not be exhaustive ... and needs to be fairly limited'. Which are suggested to be 'just examples'. There seems to be some internal contradiction here.

From a global perspective there is arguably a serious problem of definition and coherence among this terminology. Notably in the event of 'global access' (p.5); so that a Registrar in country A, would have to give access to an 'accredited' third party from country B, that the Registrar may not know and may not trust.

#### **Eligibility**

In an ideal world one might give credence to the ability of a multi stakeholder process to deliver criteria for eligibility. However, the fact is that the ICANN multi stakeholder community is still highly biased towards the interests of certain countries and certain stakeholders. Most governments, world-wide, are quite unlikely to accept criteria and identified Eligible User Groups as determined by the ICANN multi stakeholder community as it is currently constituted. Particularly if the process in question is designed to minimise the information and influence of the governments concerned. Furthermore, ALAC should be careful what it asks for; I would have serious doubts as to the capacity or interest of our At Large Structures (ALS) to reliably identify such Eligible Users in all their respective countries. It would of course be out of the question for

stakeholders in third countries to identify their preferred Eligible User Groups in another jurisdiction.

The Framework's examples of Eligible User Groups is so broad as to amount almost to 'everyone concerned'. The effect of such a wide scope would be to dilute any possibility of effectively restricting access to personal data, and to considerably aggravate the possibility of creating any such 'finite list' of Eligible Users, as referred to above.

### **Bulk Access**

It has been notorious for more than two decades that bulk access to Whois by agents and third parties has been one of the more egregious breaches of European data protection laws by ICANN.

Now it has got to stop.

Clearly, Whois data obtained legitimately must not be forwarded to unauthorised third parties (p.7) not agglomerated to create a shadow Whois. However, these observations in the draft beg the question as to how much Whois data has already been accessed in bulk, agglomerated and forwarded to third parties? If so, has the data been deleted?

Furthermore, the very existence of this process in ICANN is probably creating an existential incentive to get and keep as much Whois data as possible before GDPR related restrictions are finally introduced by ICANN. Registries and Registrars should be instructed to suspend all bulk access forthwith, if they have not already done so.

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In conclusion and in short, the combination – in this draft – of broad and vague authorisation, eligibility of third parties and bulk access, would amount to re-creating the *status quo ante* by any other name. Which would be interpreted elsewhere as a rejection of the requirements of GDPR.

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