

Adobe Connect: 27

Alan Greenberg (ALAC)	Greg Aaron (SSAC Alternate)
Alan Woods (RySG)	Hadia Elminiawi (ALAC)
Alex Deacon (IPC)	James Bladel (RrSG)
Amr Elsadr (NCSG)	Julf Helsingius (NCSG)
Ashley Heineman (GAC)	Kristina Rosette (RySG)
Ayden Férdeline (NCSG)	Kurt Pritz (Chair)
Ben Butler (SSAC)	Leon Sanchez (ICANN Board Liaison)
Chris Disspain (ICANN Board Liaison)	Marc Anderson (RySG)
Collin Kurre (NCSG Alternate)	Margie Milam (BC)
Diane Plaut (IPC)	Mark Svancarek (BC)
Emily Taylor (RrSG)	Matt Serlin (RrSG)
Esteban Lescano (ISPCP)	Rafik Dammak (GNSO Council Liaison)
Georgios Tselentis (GAC)	Stephanie Perrin (NCSG)
	Thomas Rickert (ISPCP)

Guests:

David Plumb (CBI)
Jennifer Scott (ICANN Org- Senior Director, Contractual Compliance)

On Audio Only:

None

Apologies:

Kavouss Arasteh (GAC)
Milton Mueller (NCSG)
Benedict Addis (SSAC)
Farzaneh Badii (NCSG)

Audio Cast (FOR ALTERNATES AND OBSERVERS)

Peak: 7 joined

View Only Adobe Connect:

28 joined

Staff:

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

Andrea Glandon

AC Chat:

Andrea Glandon: (10/4/2018 07:01) Welcome to the GNSO EPDP Meeting, #17, held on Thursday, 04 October 2018 at 13:00 UTC.

Andrea Glandon: (07:01) Wiki Agenda Page: <https://community.icann.org/x/KAWrBQ>

Ayden Férdeline (NCSG): (07:59) Hi all

Matt Serlin (RrSG): (07:59) Happy Thursday everyone!

Kristina Rosette (RySG): (08:00) Greetings! (waiting for operator)

Matt Serlin (RrSG): (08:00) Yes I've already been disconnected once waiting for the operator...

Leon Sanchez: (08:01) Hello everyone

Ashley Heineman (GAC): (08:02) Hi!

Marc Anderson (RySG): (08:02) I was disconnected twice trying to connect via audio

Marc Anderson (RySG): (08:02) in now

Hadia Elminiawi - ALAC: (08:03) hello all

Esteban Lescano: (08:04) Hi!

Collin Kurre (NCSG): (08:04) Welcome David!

David Plumb (CBI): (08:05) Hi everyone!

Thomas Rickert (ISPCP): (08:05) Hi all!

Terri Agnew: (08:06) Action items wiki page: <https://community.icann.org/x/NwSNBQ>

Alex Deacon - IPC: (08:07) I should have some input on the lawful basis document soon....

Marika Konings: (08:10) @Amr - it was part of the notes and action items from Tuesday's meeting

Amr Elsadr (NCSG): (08:11) Ok. I must have missed it. Apologies, then.

Amr Elsadr (NCSG): (08:11) Thanks, Kurt.

Hadia Elminiawi - ALAC: (08:13) @amr it was an action item in the email sent from marika on Wednesday 2:30

Ayden Férdeline (NCSG): (08:14) Even if it was in the action item email, I don't recall it being set as an action item during the call on Tuesday.

Ayden Férdeline (NCSG): (08:14) But maybe I am misremembering. Very possible :)

Hadia Elminiawi - ALAC: (08:14) @amr sorry it was sent on Tuesday 2 october

Stephanie Perrin (NCSG): (08:30) Yes there will definitely be cases where the registrar will have to deny access, depending on the situation.

Stephanie Perrin (NCSG): (08:31) Life under GDPR is new.

Alex Deacon - IPC: (08:31) @stephanie - unless the lawful basis is 6(1)(b).....

Stephanie Perrin (NCSG): (08:32) That is a good question for independent counsel, which I requested.

Margie Milam (BC): (08:32) a direct contract with ICANN would solve that issue

Amr Elsadr (NCSG): (08:33) I'm not clear on what is being proposed in terms of a direct contract with ICANN. If a RNH refuses to sign a contract with ICANN, what happens?

Thomas Rickert (ISPCP): (08:33) Alan, can you specify what access by whom to what you are referring to?

Kristina Rosette (RySG): (08:34) @Amr: as I understand it, they wouldn't get a domain name.

Marika Konings: (08:34) @Alan - this was the feedback from ICANN Org in relation to what other departments may make use of personal data: QUESTION: Apart from ICANN Org Compliance, do any other ICANN departments require access to registration data and, as such, might require a specific purpose? If so, please describe in detail sufficient to provide a legal basis for such data processing. RESPONSE: This question seems to be asking about any use by ICANN Org of registration data that is now masked pursuant to the Temporary Specification. One example of an ICANN Org activity that previously used WHOIS data elements that may now be redacted pursuant to the Temporary

Specification is the WHOIS Accuracy Reporting System, which is currently under review as discussed with the EPDP Team on 26 September 2018. If additional information is needed it would be helpful if the EPDP Team could please clarify if the question is for information related to such past uses of now-masked registration data, or to any current ICANN Org (apart fr

Marika Konings: (08:34) (apart from Contractual Compliance) uses of non-public data, or to any future uses of non-public registration data that may be needed in order to implement GNSO-recommended policies. Also, in discussions that the EPDP Team has had regarding purposes, ICANN Office of the CTO (OCTO) has been mentioned. To inform the EPDP Team's continued discussion on this topic, ICANN Org would like to clarify that ICANN OCTO does not require personal data in domain name registration data for its work. For example, OCTO's Domain Abuse Activity Reporting (DAAR) project

<[Alan Greenberg \(ALAC\): \(08:34\) @thomas, the one I am thinking of is GDD's operation of the Accuracy Reporting System. There may be others as well.](https://urldefense.proofpoint.com/v2/url?u=https-3A_www.icann.org_octo-2Dssr_daar&d=DwlFaQ&c=FmY1u3PjP6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=k7uKdjSb7_ZjityVqrCYHo_rKms9SFxImbYEJqG-y9I&m=r1FHdQX9FeotuXl8-U84cLdcbKBbFovyPfgM8-vzJo&s=BAzAUxO3XYALCbUj9qaFec_gKXSkxYnlSnN27lzwUUM&e=> uses only the registrar and nameserver information.</p></div><div data-bbox=)

Thomas Rickert (ISPCP): (08:35) Regarding a direct contract between ICANN and registrants: We are to review to the TS and not to recreate a completely new gTLD world.

Emily Taylor (RrSG): (08:35) Well said @Thomas

Amr Elsadr (NCSG): (08:35) @Kristina: That sounds like something that every RNH would be very OK with. :P

Diane Plaut (IPC): (08:36) Alex's (IPC) thoughtful and important questions needs to be carefully considered because, albeit showing that a direct contract with ICANN would clarify this matter, because follows directly from ICANN's mission and bylaws and could be construed to be a contractual obligation and right flowing from the registrant/registrar agreement to ICANN as it presently stands. as specified.

Mark Svancarek (BC): (08:36) Think about the relationship between end user, app publisher, and Apple Corp in the app store model

Thomas Rickert (ISPCP): (08:37) @Alan - then we need to be precise as to what we are asking for so we can review. If ICANN org is processing registration data elsewhere, ICANN org should tell us. Again, I think it would be just great if ICANN org could send us a record of processing activities. If there is no such document, it needs to be produced anyway for compliance reasons. So far, I guess we did not get a straight answer to this question.

Diane Plaut (IPC): (08:38) Agreed, Thomas

Stephanie Perrin (NCSG): (08:38) A data map would be very nice, with the request forms used

Kristina Rosette (RySG): (08:38) I'm very confused about how this is in scope. Marc was on point.

Matt Serlin (RrSG): (08:39) I know I missed the call Tuesday but I'm unclear as to what we are driving to here...this seems like a standard Compliance discussion rather than one focused on the tasks at hand

Emily Taylor (RrSG): (08:39) I agree with Kristina's query. I am completely confused about how this current conversation relates to this group's scope with regard to the Temporary Specification

Mark Svancarek (BC): (08:40) The current discussion is related to whether ICANN can perform its function without access to the data and whether this is a 6.1.b basis

Marika Konings: (08:43) @Alex - that language comes from the UK Data Commissioner's web-site

Marika Konings: (08:43) https://urldefense.proofpoint.com/v2/url?u=https-3A_ico.org.uk_for-2Dorganisations_guide-2Dto-2Dthe-2Dgeneral-2Ddata-2Dprotection-2Dregulation-2Dgdpr_lawful-2Dbasis-2Dfor-2Dprocessing_contract_&d=DwlFaQ&c=FmY1u3PjP6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=k7uKdjSb

Julf Helsingius (NCSG): (09:02) 6 (1) f
James Bladel (RrSG): (09:03) +1 Emily. We seem to creating "necessity" where none exists.
Stephanie Perrin (NCSG): (09:03) If you continue down this course to ignore 6 1 f, you are going to get a new series of questions from the DPAS. May I ask formally that the Board/ICANN org team who have been seeking clarity from the DPAs kindly table their questions, notes, and any thing else they have gleaned from this exercise?
Amr Elsadr (NCSG): (09:03) @Emily: +1
Matt Serlin (RrSG): (09:03) agreed Emily
Hadia Elminiawi - ALAC: (09:03) Can those who support 6 1 b speak to this - i see most of us supporting 6 1f
Margie Milam (BC): (09:03) 6(1)(b)
Greg Aaron - SSAC: (09:04) James, my point is that the contract says that the data must be deposited, and that a "use" of the dat is for "verification that the deposited data is complete, consistent, and in proper format" is RAA 3.6) Somehow it must be verified that is taking place.
Margie Milam (BC): (09:04) Agree with what Mark S said
Thomas Rickert (ISPCP): (09:04) It is true that we said the preferred way would be from b to f to a, but we should not try to work on a questionable b that will likely not hold water. IMHO f will be robust.
Thomas Rickert (ISPCP): (09:04) Long way to saying +1 to Emily
Hadia Elminiawi - ALAC: (09:05) @Thomas totally agree
Stephanie Perrin (NCSG): (09:05) +1 to Emily and Thomas
Hadia Elminiawi - ALAC: (09:06) +1 Emily
Amr Elsadr (NCSG): (09:09) @David: That's a good question.
Mark Svancarek (BC): (09:09) +1 AlanW
Stephanie Perrin (NCSG): (09:14) That is not implicit, it is explicit.
Stephanie Perrin (NCSG): (09:14) Comes from being a data controller....accountability.
Amr Elsadr (NCSG): (09:17) @Diane: I don't understand the last part of your comment? You want 61b to be applicable via amendments to the ICANN/contracted party contracts, not by having RNHs also sign contracts with ICANN? I probably misunderstood what you were saying.
Marika Konings: (09:18) This is also a specific question you can call out in the Initial Report and ask for community / EDPB input on?
Ashley Heineman (GAC): (09:22) Marc - I'd assume it would be a problem for all references to 6 1 F
Marc Anderson (RySG): (09:22) that's my fear
Hadia Elminiawi - ALAC: (09:22) + 1 Marc
Amr Elsadr (NCSG): (09:23) @Marc: Agreed. And I don't believe the solution to this should be to attempt to bypass the fundamental rights and freedoms of the data subject should be pursued by making 61b applicable.
Diane Plaut (IPC): (09:23) Amr, I suggested that if we proceed under the present framework(with no direct contract with ICANN - which should be of course considered); we need to provide both basis along with a recommendation to ICANN (as they want) about a clear amendment to the contract which provides transparency to registrants that ICANN wishes to provide the m with a compliant framework and that in doing so asks for their consent to submit this for compliance
Amr Elsadr (NCSG): (09:25) @Diane: Thanks for the clarification. Interesting idea. Although I'm still not clear on how 61b would be applicable in this scenario.
Hadia Elminiawi - ALAC: (09:26) one year
Diane Plaut (IPC): (09:27) Amr it would be the most compliant and direct way to address the needs of ICANN and be compliant under GDPR
Hadia Elminiawi - ALAC: (09:30) @diane your suggestion is certainly good as it also guarantees that the processing is in line with the registrants expectations

Thomas Rickert (ISPCP): (09:32) Alan +1, NEED is the key word to start with

Mark Svancarek (BC): (09:32) I like Diane's suggestion and propose that we discuss in a future session

Thomas Rickert (ISPCP): (09:33) ICANN org should have a retention policy. Maybe we can see that.

Thomas Rickert (ISPCP): (09:33) If it does not exist, it needs to be established anyway, so we aren't asking for redundant work.

Mark Svancarek (BC): (09:33) <broken record> A DPIA would include a retention policy </broken record>

Hadia Elminiawi - ALAC: (09:34) @alan and Thomas I believe that at some point ICANN said that 1 year is sufficient for their needs

Thomas Rickert (ISPCP): (09:34) Alan, the question is what and why? The question can only be answered by ICANN org. I guess we can stop our discussion on this here.

Hadia Elminiawi - ALAC: (09:35) we can pose the question to ICANN - which I believe we already did in LA

Thomas Rickert (ISPCP): (09:35) Hadia, I am glad your memory is obviously better than mine. Then, let's ask for a rationale for the 1 year. Is it desirable to have 1 year or have there been cases up to 1 year? If we get facts to support 1 year, we can probably come up with a robust rationale.

Alan Woods (RySG): (09:35) @hadia ... that is all very well and good that statement is not enough ... they need to justify, in detail, and transparently, why they need it, and why the need for that long

Alan Woods (RySG): (09:35) hahaha thomas got in faster!!!

Alan Woods (RySG): (09:36) :D but at least we are on the same page

Thomas Rickert (ISPCP): (09:36) Great minds, Alan :-)

Caitlin Tubergen: (09:38) @Stephanie - can you please write down your precise question in the chat?

Stephanie Perrin (NCSG): (09:39) Sure Caitlin, I would be happy to. Give me a minute and I will paste it in.

Alan Woods (RySG): (09:40) it's not a small amount of consideration ... granted but we are simply not in a position to do that for you Jennifer. If ICANN compliance can justify a period, they can present the justification.

Thomas Rickert (ISPCP): (09:40) But if we do not have facts, we cannot justify the retention!

Thomas Rickert (ISPCP): (09:40) Anecdotal data will not do I am afraid

Thomas Rickert (ISPCP): (09:43) We need to make the distinction between statutory retention requirements for registrars and those that ICANN asks for. Registrars might need to keep certain data much longer than two years, but I have heard NOTHING substantial to support the 2 years for ICANN.

Mark Svancarek (BC): (09:44) I naively assume that ICANN can look at the historical record and derive a justifiable retention period based on past successes and failures...

Alan Woods (RySG): (09:44) a data map if you will?

Thomas Rickert (ISPCP): (09:45) @Marc, maybe, but we need facts to assess the period

Thomas Rickert (ISPCP): (09:45) Mark - sorry for misspelling your name

Georgios Tselentis (GAC): (09:45) Is there a date limit for submitting a complaint/audit?

Ashley Heineman (GAC): (09:45) Good question Georgios.

Hadia Elminiawi - ALAC: (09:46) @Diane even if we have the registrant's consent - I would not use 61a - if you use 61a and for some reason the registrant withdraws consent you can not go back to using 61a, however informing the registrant is important

Mark Svancarek (BC): (09:46) @Thomas - agree, the historical record would be the list of facts: e.g. "We performed 700 actions, none required data older than 19 months; hence we propose 19 months retention"; etc

Alan Woods (RySG): (09:46) +1 hadia

Collin Kurre (NCSG): (09:46) @Georgios If memory serves, the conversation in LA seemed to imply that there was not. I'd also be interested in having that question answered directly.

Stephanie Perrin (NCSG): (09:46) Caitlin, I think this captures most of it. I will check the transcript and see if I need to add bits later.

Stephanie Perrin (NCSG): (09:47) We have spent most of this meeting exploring the role of compliance at ICANN, in order to support a proposal that ICANN has an implicit contract with the registrant and that therefore 6 1 b applies as a grounds for processing. This would also facilitate ICANN operating a UAM on behalf of those who want the data. It might also explain Goran's initiative in seeking some kind of recognition by EU authorities that ICANN has a kind of quasi-regulator status, as the authority vested with the responsibility to manage the DNS. Given that all of this is outside the current configuration of ICANN as data controller, which would be more clear had we done a DPIA and had we adequate data maps to work with....can we either get back to our Charter questions that we were mandated to address by the GNSO, or get a full explanation of what is going on and why we continue to be focused on the access question.

Kristina Rosette (RySG): (09:47) can we go to the first page, please

Thomas Rickert (ISPCP): (09:47) Hadia +1

Terri Agnew: (09:47) everyone can scroll themselves

Kurt Pritz: (09:48) @Georgios - we will add your question to the ones posed to ICANN compliance as one tool to determine a data retention period

Diane Plaut (IPC): (09:48) That is a reasonable point Hadia and one to be further discussed: we can certainly review and recommend proposed amendments suggestions to ICANN regarding the existing contract but the point would be to be compliant and to accommodate the compliance needs of ICANN for the benefit of all parties we should be considering a 6 (b) basis.

Jennifer Scott (ICANN Org - Compliance): (09:53) Thanks everyone for sharing your time with me today. Need to drop off.

Diane Plaut (IPC): (09:53) I agree with Stephanie - we have been placed in a difficult task to answer the charter questions with precision without clearer information from ICANN in line with a DPIA, Art. 30 Record of Processing and answers to the fundamental questions we have put forth. Therefore, if we are not going to get those questions answered because ICANN is not in the position to answer the questions at this time or is still exploring its options, then we must answer the charter questions but still pursue the legal recommendations for paths forward that they have asked for and which are demanded under our analysis of a compliant framework for the future.

Thomas Rickert (ISPCP): (09:53) Thanks, Jennifer!

Hadia Elminiawi - ALAC: (09:53) @Diane i agree that if we can use 6 1(b) it would better

Diane Plaut (IPC): (09:54) Please pardon my typos I am having difficulties with my computer keyboard.

Hadia Elminiawi - ALAC: (09:55) *would be

Stephanie Perrin (NCSG): (09:56) No it would not be better. This is why you need to bring in a data protection expert to help us with this analysis.

Stephanie Perrin (NCSG): (09:57) The contract still has to balance the fundamental rights of the data subject. Do I need to copy paste the relevant clauses of the GDPR here? Happy to do so but it is quite a slog of reading in the chat....

Collin Kurre (NCSG): (09:57) Second (third?) Diane's comments. The incomplete information is making this too much of a guessing game. The time of this group could be used more efficiently if we had clear information on data flows and legality under GDPR

Stephanie Perrin (NCSG): (09:58) It is very very clear that the purpose of the GDPR is to address the imbalance of power in the data relationships of the Information Society.

James Bladel (RrSG): (09:58) Need to drop. Thanks all.

Matt Serlin (RrSG): (09:58) I've gotta drop for another call...thanks all

Amr Elsadr (NCSG): (09:59) Thanks, Kristina. Appreciate it. Happy to park this until you hear back from the relevant ROs.

Hadia Elminiawi - ALAC: (10:00) @Stephanie we already said that it is 61 f - no one said that the balance is not required - if it meets the rregistrant's expectations and would not have an unwarranted impact on them then we are fine

Kristina Rosette (RySG): (10:00) I have to drop for another call. Talk to everyone next week (and Amr, I'll be in touch as soon as I have more data).

Hadia Elminiawi - ALAC: (10:00) thanks Kristina

Ayden Férdeline (NCSG): (10:01) thanks all

Hadia Elminiawi - ALAC: (10:01) thanks all bye

Thomas Rickert (ISPCP): (10:01) Bye all

Rafik Dammak (GNSO Council Liaison): (10:01) bye all

Collin Kurre (NCSG): (10:01) thanks

David Plumb (CBI): (10:02) Take care everyone

Julf Helsingius (NCSG): (10:02) Thanks everybody!

Georgios Tselentis (GAC): (10:02) thank you all

Amr Elsadr (NCSG): (10:02) Thanks all. Bye.