**Key statements from the 14 March 2018 RDS PDP WG F2F deliberation on the ICANN Contractual Compliance purpose**

Notes: 1) Except for what is in parentheses, text in is a direct quote from the transcript; text in parentheses was inserted by Chuck to clarify the context without copying all of the comment; 2) in most cases as indicated, comments shown are excerpts – for the full comment please refer to the full transcript.

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| Michele Neylon | . . . the contractual compliance function is not a matter of ICANN forcing a registrant to comply with anything. It's more to do with forcing the registrar or the registry to comply with a contractual obligation. | P.25 last comment |
| Jennifer Scott (ICANN Compliance) | . . . (RDS) contact information (for registries & registrars) is already available to us through our contractual obligations with contracted parties. But there might be other information that we need to see like their abuse contact information in order to validate that they've got that requirement for abuse requirements met. | Pp.27-28 |
| Marika Konings | . . . compliance will need to verify that, you know, contracted parties meet those obligations. So not a need to contact, but to look at what is being provided is consistent with what the (contractual) requirements are . . . | P.28 |
| Michele Neylon | . . . contractual compliance also conducts audits . . . | P.28 |
| Alan Woods | . . . One thing that we need to, of course, remember here as well is that ICANN is a data controller in this instance. And by reason of that designation alone, they have access to that data. We have a contract with ICANN which states that we must provide them with this data . . . They already have that data; therefore we shouldn't be curating it. | P.29 |
| Chuck Gomes | . . . isn't one of your requirements to display that in your - it is now. That may change, but if that - if you have a requirement, let's say in the future RDS that there's a requirement that you display the abuse contact publicly. They don't need - you've told them who the abuse contact is, but they have to verify that you're also not just giving it to them but displaying it as required in the agreement. . . | P.29 |
| Beth Bacon | . . . if you need an abuse contact or something, I think it would be - that's a conversation of what is - what's the public set? So do we need the abuse contact in the public set or is that something that we could keep behind the gate? And that would help with this purpose. But if it's out front, I would say no. If it's behind, maybe. . . | P.30 |
| Michele Neylon | Two words, data escrow. ICANN already, because ICANN is data controller for the data escrow, it already has all the data. So in may respects you could actually say well, you know, no. They don't need access, because they already have access. . . | P.30 |
| Griffin Barnett | . . . it may be necessary for a public data element that they still need to see it to determine whether that's there. But I think it could still apply to private elements or, you know, non-public elements as well because if there's a requirement that that element be included in the non-public data set, they may still need to check that that's being done if that's what is required. . . | P.31 |
| Alan Woods | . . . they don't need to be certified to see that data that is in the non-public set because again, they are by their nature a controller and therefore have access to that data. They have a right to see that data without certification. So we don't have to go through that entire false process of certifying them. They just will have access to that data. . . we're not only looking at data minimization, we're also looking at purpose minimization in these things. And this is a prime example of purpose minimization. We don't need to over-egg the pudding in this. They have the data; therefore, it's not a legitimate purpose. | P.32 |
| Lisa Phifer | . . . ICANN will need to demonstrate that it has a purpose, correct? So for example, ICANN will have to demonstrate that it has a purpose for escrowing data. And that will be a very specific reason to deal with failures and transfer of data in the case where a registrar is the accredited for example. But that’s very specific, narrow, limited use. And so then to take and say oh, but they can also use it for contractual compliance enforcement is a different purpose that still needs to be defined. | P.32 |
| Vicky Sheckler | . . . if there is an RDS requirement and there are data elements supposed to be included within, I'm sorry. And their data elements are supposed to be included within the RDS, regardless of whether they're inside a gate or outside of the gate. And if that's part of the contractual obligation that ICANN at, you know, with its enforcement hat is supposed to check, they'll need to know if it's there or not regardless of whether they have it in escrow. Because it's a different purpose. And it's checking to see if the RDS obligation if there is one is being met. | P.33 |
| Maxim Alzoba | . . . First of all, we shouldn’t assume that the current escrow contracts are going to be the same. And because of the trans-border transfers, for example, if the escrow provider is in the same jurisdiction, and trans-border doesn't occur with the storage, (unintelligible) will occur with the retrieval of information. And it might be forbidden for example. . . The second thing is I'm not sure we need to just touch separate process here because escrow is separated from RDS. . . | P.34 |
| Kathy Kleiman | . . . rephrase what I think Maxim is saying which is that the public directory service or even the private directory service, public and nonpublic WHOIS may have nothing to do with what we're actually backing up for purposes of restoring by other registrars if a registrar or registry goes under. | P.35 |
| Jennifer Scott (ICANN Compliance) | I think what you're asking is how the data escrow agents actually function. So I would probably have to defer to them on whether or not the registrars and how their interaction with the data escrow agent. If it's something that they're getting out of like their EPP system or if they're getting out of RDS, that I don't know. I'd have to defer to those experts. | P.35 |
| Kathy Kleiman | (Clarifying question) . . . Are we talking about two different systems? What goes into data escrow and what goes into an RDS? Are they - do they overlap? | P.36 |
| Michele Neylon | . . . under the current data escrow specification, the - as a registrar I ship data to the escrow agent in a particular format. That format has absolutely nothing to do realistically with what I ship to the registries or what I display in public WHOIS. It's a very specific way of storing the data. . . | P.36 |
| Kathy Kleiman | So can we just say this is out of scope for RDS - the RDS working group to talk about data escrow? That's just not in our scope. | P.36 |
| Michele Neylon | Well no, it is in scope because it's a collection of processing of registration data. And the reason we're collecting and processing the registration data is because of RDS. So it is in scope. | P.36 |
| Michele Neylon | . . . the only reason that we collect a lot of this data at the moment in the way that we collect it and process it is because it's a contractual obligation which is tied back to the WHOIS specifications which is becoming the RDS, correct? And the only way that you can reproduce the data and move it across if the in cases of failure is if the data has been escrowed. So the two are interlinked. | P.37 (Cont’d from p.36.) |
| Vicky Sheckler | . . . I think what I'm hearing you say Michele Neylon is that you're contemplating, and this could be my complete ignorance, that the RDS that we're trying to deal with is not the subset, but the entirety of the data that's collected. Is that what you're suggesting? | P.37 |
| Michele Neylon | . . . it's the data that we're collecting that you're escrowing. It's not the data that's held by the registry that’s being escrowed in that instance. So there is an escrow of the data at the registry . . . | P.37 |
| Chuck Gomes | . . . the two are not a match what's in RDS and probably even less likely in the future. And what's escrowed. There's - there are elements that don't - they're not - it's not a one-to-one mapping is it? | P.38 |
| Michele Neylon | No. . .If I make an update to a domain name after the data has been escrowed for that 24-hour period, what's in the escrow is different to the data that I hold and is different to the data held by the registry. . . | P.38 |
| Marc Anderson | . . . collection is a subset of processing. It's a type of processing. You know, you can't have escrow without the collection of data. So there, you know, they're inexplicably linked. They're inseparately linked. So it's really, you know, it's a really impossible to completely separate out escrow from the RDS conversation. You know, so I think we're - we can't ignore it even though it may be a secondary topic for us. | P.38 |
| Marc Anderson | . . . Our definition is information accessed to enable ICANN compliance to monitor and enforce contracted parties' agreements with ICANN. You know, so that's our definition of our proposed RDS purpose ICANN contractual enforcement. If you'll bear with me and go back to the other slide, I think this is an interesting question because it almost creates circular logic for us, right? So is this a legitimate purpose for processing the data? | P.39 |
| Maxim Alzoba | . . . First, I think that escrow is part of the purpose. Not necessarily the part of RDS system. Okay, so that's why we need to mean - to mention it. The second, registry escrow is quite different from registrar escrow. For example, registrar escrow has real information which is ICANN Moderator: Michelle Desmyter 03-14-2018/4:00 pm CT Confirmation # 6937997 Page 40 hidden behind privacy and proxy. And registry doesn't know if it's just set of symbols saying privacy proxy or the real privacy proxy. So the contents are different. And not necessarily registry will be able to know the registrant at all. . . | Pp.39-40 |
| Griffin Barnett | . . .It's in response to Marc's point about sort of circularity here. I think the problem stems from our broad use of the term processing because you're thinking collection is the processing that you had in mind. And ICANN compliance may not - I mean the collection of the data may not be what's required for ICANN compliance purposes but accessing that data would be required. And that's a separate processing step. | P.40 |
| Holly Raiche | . . . The collection relates to the functions of registries. And registrar cooperation compliance is a different purpose which is to check on that. And that's a different part of the whole term of processing. | P.40 |
| Chuck Gomes | So I need to do a quick wrap up here. So we end on time, I hope. . . | P.40 |
| Chuck Gomes | . . . Think about how you might answer that question we're talking about. Is this a legitimate purpose for? And you're probably not going to - based on what I heard you're probably not going to use the term processing. You're probably going to be more specific. . . | P.41 |
| Chuck Gomes | . . . I want to give a special thanks to (Salim) and (Jennifer) for being here with us. And by the way, yes. By the way, and another action I guess is to send them the meeting information on the 27th. You would be welcome to join us on that one. . . | P.42 |