EN

PANAMA – GAC: Discussion on GDPR
Tuesday, June 26, 2018 – 08:30 to 09:45 EST
ICANN62 | Panama City, Panama

MANAL ISMAIL, GAC CHAIR: Before handing over to Tom to provide you with the overview of today, please remember to state your name and affiliation whenever you request the floor. Tom, over to you please.

TOM DALE: Thank you, Manal. Good morning, everybody. The purpose of this very brief preview or overview of today's sessions relevant to the GAC is to provide you with a very short update. Things keep changing of course, in this environment. So we are trying to keep you up to date. And the GAC has requested this update each morning if possible. The GAC will be resuming its discussion from yesterday concerning the full range of GDRP and picking up essentially where you left off. The second half of session the GAC will be hearing from business contingencies concerning proposals they have been working on in regards to accreditation and access for arrangement for nonpublic data.

We will be having a session as usually in preparation for meeting with the board. The GAC is meeting with the ICANN board tomorrow. The purpose of that session is to run through the issues and hopefully specific questions that the GAC wishes to put to the board members

and if possible to agree then we can provide those to the board in advance later today. Yesterday some possible issues [indiscernible] thank you for the responses to those. And then there is a session for the BGRI, board review implementation working group which will be working with the implementation of the action requests registrar handling GAC advice which you heard from Rob yesterday and also an operational update on some aspects of handling information on applications for two character codes at the second level.

There's a meeting between the GAC and the GNSO council later in the morning, a lot of the next steps in the GDPR exercise. Never a run, just steps, and if there's time [indiscernible] a session dealing with communication review. However, as we don't have any text submitted for the communique or substantial texts, the proposal is to use that session to enable a discussion on more substantive rather than operational aspects of the two character code issue, a number of members have expressed interests and concerns in that, some of the more fundamental concerns that some members have.

Finally, in the GAC sessions, there is a meeting in the country code numbering name organization and this afternoon two cross community sessions dealings with GDPR next steps, one on the WHOIS RDS, arrangements in the post GDPR environment, and one dealing with access and accreditation issues. Those will be alluded to in the session the GAC is involved in this morning. Thank you, Manal.

ICANN
POLICY FORUM 62
PANAMA CITY
25–28 June 2018

MANAL ISMAIL, GAC CHAIR: Thank you very much, Tom. And I should have mentioned at the beginning that we're having a little bit of difficulty with the connection of the scribes.

I had a request for the floor from the European Commission and then Kavous.

EUROPEAN COMMISSION: Hello, I wanted to share views on the WHOIS reform, which views have been discussed with European member states and of course would invite member states to complement these views today and tomorrow on the GDPR and WHOIS reform. First of all, I wanted to welcome the fact in that ICANN is active on several fronts, seeking community input on the unified access model, engaging in dialogue with data protection authorities and governments within the GAC. We think it's very important to have clarity on the process ahead of us so that we can all work constructively. Not absolutely clear where the different elements fit in between the different specifications, unified access models and the EPDP. We want a comprehensive [indiscernible] in place, not just a partial approach, and this should cover access and accreditation. We think that now GDPR is coming to application and temporary specifications in place, the work should focus on the pending issues and we should try to make quick progress on priority areas as identified by the GAC's latest advice, and two areas in particular where we think we can make swift progress, that is the availability of email address as WHOIS data. We know that ICANN is in contact with the data protection authorities on this point. But we

ICANN
POLICY FORUM 62
PANAMA CITY
25–28 June 2018

would really suggest to consider all possible solutions including [indiscernible] the email addresses.

Another point which could be settled relatively quickly we think is the distinction between national and [indiscernible] GDPR only to the processing of personal data. So we think by making the distinction between natural persons and legal persons, we could have have a different system for the legal persons. And this is something ICANN should look into carefully.

On the unified access model, we welcome the fact that ICANN is continuing its efforts towards a unified model in line with a [indiscernible] approach. We think the model developed by ICANN should be as comprehensive as possible to avoid [indiscernible] between different contracting parties and user groups. We think ICANN should aim to propose concrete options as the basis for discussion in the community. More in detail, we have a number of comments on the model as it is proposed now. We support the approach of identifying different categories of users as indeed the different needs and requirements need to be considered. We also support the idea of designing specific organization with expertise in different categories like Europe pol for enforcement, [indiscernible] for ipr, however, we would urge ICANN to carry out a much more in-depth assessment of the charters of these organizations to carry out tasks that we would request from then.

We think that if the solutions for the different categories are worked out at different speed, this should not prevent the implementation for

ICANN
POLICY FORUM 62
PANAMA CITY
25–28 June 2018

one category as soon as it becomes available and from our perspective, it seems that a situation is particularly [indiscernible] for law enforcement authorities, and we would support rapid progress in this area.

And finally, we think the model as stands looks many [indiscernible] but the final model should also provide a process to access data that is as simple uniform as possible if from a user perspective.

And to conclude, I would say we would support governments to help ICANN in set forth and provide input where relevant, and input is not only views but also feedback on the situation at national level, good practices that could help develop the model. In exchange, we would ask ICANN to put on the table concrete proposals which would allow a good discussion and progress as quickly as possible.

MANAL ISMAIL, GAC CHAIR: Thank you very much, European Commission, for this valuable input. I have Iran and then China, please.

IRAN: Thank you, Manal. Just with respect to our meeting with the board, I hope our comments will be duly taken into account. Namely the question with respect to action of the GNSO [indiscernible] perhaps should be addressed to the GNSO but not to the board. The board may not be responsible or in a position to take any position on behalf of the GNSO. That is one point. And the second point about the two character ccTLD, reminder this is an important issue. 45 countries

serious concerns, and this is to be reminded to the board. And we have about a year ago a promise from the president of ICANN saying some mechanism will be in place, and we do not know anything today about that mechanism at all. We don't know what that is apart from saying okay, we are ready to talk to the government, that's all. But we have not seen anything. We would like to seriously pursue this matter.

MANAL ISMAIL, GAC CHAIR: Kavous, we will be preparing for the GAC meeting with the board in the coming session. I would rather we discuss those points at the following, if you don't mind.

IRAN: But what are the subjects on which we should have advice to the board by sometime today? We should know the subjects, which are the subjects. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you, Kavous, and exactly, we will have a preparatory session for our meeting with the board, and then we will have a session also to discuss GAC advice at this stage. So thank you very much, we will do this the following session. So China, please.

CHINA: We have been all the way actively and carefully following all different tracks of the elements of GDPR within ICANN and providing useful information to GAC leadership and GAC members in a timely manner

ICANN
POLICY FORUM 62
PANAMA CITY
25–28 June 2018

and assisting to facilitate the GAC and PDP discussion. [indiscernible] requires a lot of time and effort.

Actually, I have comment with the issue of GDPR. We ask the GAC definitely anticipate the GAC's concerns can be addressed immediately because of the complexity of the issue of GDPR compliance. We also should be mindful of difficulties along with different tracks as some of GAC members had already pointed out. Sometimes it is not that easy but my point is I firmly believe that the GAC's concerns, quick and timely response from other parties like [indiscernible] GNSO, in light of the interest embedded in the GDPR compliance. With that, I think the priority of GAC of this week is to see the opportunity of face to face interaction to try to identify the way forward together with ICANN board, GNSO, and the entire community to move on the discussion in the right direction.

Later this morning the GAC will be meeting with GNSO, and on Wednesday the GAC will be meeting with the board. In this regard, I would very much agree with the approach that the GAC is able to prepare logical and well-articulated questions to the board and the GNSO targeting key issues.

This is the conclusion of my comment. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you very much, China. So can we have the slides up, please, where we stopped yesterday on questions that would be discussed during the cross community sessions later this evening. I am handing

LAUREEN KAPIN: it over to you for the relevant sessions. And unfortunately we have a hard stop at 9:15 to allow for the presentation.

Good morning. We will continue with our GDPR theme here. Would like to acknowledge and thank the GAC members from the EU and China for their support and for the specificity of the EU statement. I think it's important to be precise and specific when giving advice and making statements. And in that regard, here is my smooth segue to slide in the cross community sessions. We will have the opportunity to express some views at the cross community sessions later this afternoon. There are two of them. I will be speaking on behalf of the GAC's public safely working group and my co-chair, Cathrin, and we have carefully matched our colors today for a unified front, and we will both speak today at these cross community sessions.

And what you have before you are the questions that will be put to all the panelists on the cross community sessions. And this would be a good opportunity for us to give you input on particular issued you want emphasized. We have a sense based on prior GAC advice and discussions and analysis that we have been engaging in as a GAC in the public safety working group, but we do have this great window of time where we can provide you the opportunity for any additional input.

So what you see in front of you are the questions for the first cross community session. As you see, there are a number of questions, and these topics actually should ring a bell since we've been speaking

about them yesterday and today and are in the briefing papers. Some of the highlighted questions are of particular concern. Although I will start with number one, what are the benefits to GDPR that we've observed. I think that that is an important question to make sure that we have a balanced perspective, because of course the GDPR has brought about many benefits to individuals in terms of protecting their privacy, in terms of really giving entities that gather individuals' personally identifiable information a clear structure for how that handle and protect that information. So in all our discussions of the problems and challenges, I want to make sure we don't lose sight that actually there are many positive impacts and didn't want to launch into our discussions about issues and challenges without first making that statement that of course the GDPR has improved and protected individuals' privacy in that way that is a real benefit to the public.

So that said, I will launch into question 2, the temporary specification. And there you will see a focus on particularly 2b and c, what concerns remain about the temporary specification, what needs to be fixed. And I think that is something that we've spoken about yesterday and today but I also wanted to open it to the floor briefly to get your input. So if you have specific issues that you want to make sure that we emphasize during this cross community meeting about the temporary specification, I welcome your questions and comments. The United States.

UNITED STATES:

Thank you. Ashley with the United States government. Yes, I'm happy to get the ball rolling here. I won't go through my entire list. But just to name a few, I think starting with our GAC advice we have issues with respect to the anonymization of the email address which we asked for something different in our GAC advice. We think there are ways to make this information available as well as making a distinction between legal and natural person and then also ensuring confidential of latter requests.

In terms of other things now that the [indiscernible] has been implemented, a general lack of unanimity, as to how things are -- and one example is there's no readily available information with respect how to request nonpublic information nor process by which to make that request. And then there is no uniform way in which -- what kind of information to necessary to ensure that access is given to this information in terms of justification. Also the same goes with respect to the anonymized email. Not always clear what kind of context is being used, the actual email address and no requirement for that but I think that's proven problematic now that we're using the temporary specification. I will stop there, thanks.

LAUREEN KAPIN:

Thank you. Other comments? So I think that actually does coincidentally, that matches most of the list that I have. Not surprising, because this is the result of GAC advice. The only thing I would add, the other concern that law enforcement has expressed that there needs to be sufficient ability to make a sufficiently robust

request, i.e., if law enforcement does not just want to make one query to the WHOIS but actually has a number of domain names that they are investigating because of malicious behavior, they need to be able to make those requests swiftly and receive an answer swiftly. And when you hear this term query volume, that's really what is being talked about, the ability to make multiple requests because of investigative needs. So I would add to that list.

Okay. Also in terms of practical issues, you have encountered as a result of the temporary specification, I will let you know that I have been collected information from my law enforcement colleagues, and in terms of practical issues, as I mentioned yesterday, many people on the front lines don't even know that they can make a request for nonpublic information. They don't know who to ask, and that is a practical problem.

And the second issue is in a certain way in terms of practical issues you've encountered, this question is a little bit premature. Because investigations come over time, and it's going to take some time before we really have a full percentage of the challenges and risks and harms that actually are caused by the lack of public information. Because investigations that are active now may have already gotten their registrant data and used that to go much further in their investigation and get to the players who are responsible for the bad acts. So they may already have that information, they may be consulting private parties who have collected historical information. But at some point you'll all that historical information is going to be stale, it won't be up to date, there's a cloak over certain information, and at some point

new investigations will emerge where they will need that information and again, people don't know how to request it and if they do, there isn't a unified system that actually ensures they will get that information in the time they need, so practical issues. So switching now from the temporary specification –

MANAL ISMAIL, GAC CHAIR: I'm sorry, thank you, but we have a request for the floor.

INDIA: While supporting the comments made by my colleague from the US and summed up by Laureen, one more point. No clear guidelines, no onus has been placed on the [indiscernible] in terms of times for sourcing these requests. So that's an important issue for the [indiscernible] apart from once again the fact that Laureen rightly capitulated, all this information going dark, the questions regarding the validity of the data, once everything is qubl, is these are the two issues which are very important apart from the supporting views of the US regarding query values and confidentiality of the queries, supreme importance. Would like to reinforce the importance of this and the importance of putting in place an answer quickly which can alleviate the problems the [indiscernible] are facing.

LAUREEN KAPIN: Absolutely, and in many ways these are primary issues that come even before other things. The question of accurate information is something the GAC has talked about in their advice again and again

ICANN
POLICY FORUM 62
PANAMA CITY
25–28 June 2018

and still a lack of certainty. Although the GDPR does have provisions that mandate accuracy and perhaps this will be advantageous for law enforcement but timing, accuracy is paramount and the need to get this done so that the information now inaccessible becomes available, that's key.

MANAL ISMAIL, GAC CHAIR: Thank you, we have a request for the floor from Germany.

GERMANY: I would like to act at the request for the data access for cyber security authorities which are not part of the German law enforcement community. I would like to add also this [indiscernible] access. Thank you.

LAUREEN KAPIN: And of course our cyber security researchers are often on the front lines of detecting DNS abuse, malware, botnet attacks, headlines -- when you see a headline that a bank has been offline for a number of days or held hostage to ransom ware, someone has shut down their systems and demanding money. So the cyber security researchers rely on all of this WHOIS information to detect trends and patterns and often are in alliance with law enforcement to stop this malicious behavior and assist in investigations, so very crucial as well.

Moving now, transitioning to the expedited policy development process. Of course yesterday we heard at the GNSO session at the end

of the day that expedited really means expedited because they at this point are attempting to issue a preliminary report on whatever they intend to cover within four months. Of course even my [indiscernible] math nose that four months is far less than a year. That means the scope question is going to be particularly challenging. Because this is going to be a very condensed process.

So given that extra nugget of information we have, that the plan is to get a lot of this work done within four months, issue a preliminary report which then provides for community input and comment, of course that's crucial as well, the issue is going to be asked what is the property scope and timing of the EPDP. And just in terms of timing, the bylaws do mandate that the clock is running, and the clock is going to be ticking and gonging within a year from May 25th. So in terms of timing, I do think that is answered.

In terms of scope, I think the issue we heard very clearly in the session yesterday with the GNSO council is that you are going to have certain folks who are advocating that this expedited policy development process only focus on the current temporary specification. And other folks are advocating for the EPDP to also focus on the issue of access and accreditation. And to put that into real-world terms, the issue of access and accreditation has been the primary topic of concern go law enforcement, cyber security, ip rights holders, and also Joe and Jane public, as I like to call them, anyone who has a legitimate interest in getting access to nonpublic information. The issue is really going to be to what extent this very quick process can grapple with those issues, and to the certain extent, the temporary specification does

ICANN
POLICY FORUM 62
PANAMA CITY
25–28 June 2018

already demand access to nonpublic information be made, it just doesn't specify how, that there be a uniform method. It doesn't specify timing requirements. It doesn't specify a lot. Yet the subject is already there. So that is going to be I think the issue that will be the big topic of debate.

Do folks have views onto what extend the EPDP should be covering this issue of access and accreditation, and particularly should it be covering this unified access model which ICANN has recently released to the community?

US: Thank you, Laureen, for that extensive overview of the issue. We're very concerned that access hadn't been more of an access of focus of efforts to date. We have seen access and accreditation to be central to what the GDPR model was going to be, and I feel it hadn't been given its due. I'm concerned it's not going to -- there's posturing to not make it the focus of this EPDP, there's the concern of time. But this has to be a focus. This has to be a deliverable. And if it's not going to be a deliverable at this EPDP, I think we need to seriously look at other alternatives, whether this has to be key and central to the issue as it moves forward. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you, US. So Laureen, we have India.

INDIA: Thank you, Chair, I also totally endorse the point of view of my colleague from the US, that the access and accreditation model is central to any EPDP process which comes into being. Even the feeling I got yet in the cross community session, from the constituents of the GNSO, there was support for the idea any model which has comes into place would be incomplete without doing justice to the central core of the model which continues to be access and accreditation to parties and user groups for legitimate purpose.

EUROPEAN COMMISSION: I would reiterate, we need a comprehensive policy at the end of the EPDP -- should include an access and accredit model. We should avoid fragmentation between different categories of users.

MANAL ISMAIL, GAC CHAIR: Thank you, European Commission. Any other comments? India, go ahead.

INDIA: One additional sort of consideration which the sense I got from what I heard yesterday is that finally after the grant of the authentication token, the request for data would be required [indiscernible] with the token. It kind of remains still unclear whether despite having the token whether the [indiscernible] part of demonstrating legitimate purpose for requesting a data, would there be other due process requirements in terms of spoken or court order additionally to be

required to be serviced or additional considerations which would be required individually? There needs to be greater clarity around this.

MANAL ISMAIL, GAC CHAIR: Thank you, India.

SWITZERLAND: Jorge Cancio. I think in the end the access and accreditation has to be part of policy insofar as policy is concerned so those aspects that really are policy that relate to this will have to cover in one year's time, surely, this aspect. As to other aspects which are more related to implementation or how to make that work, maybe they don't need to be in the policy documents that will go out in the end. And as to where to exactly start the work, I think we can be agnostic and look into what is more efficient and quicker and where we can make progress better, and if there is as we have heard the result of good community consensus and we can put it into a temporary spec and avoid waiting 12 months, let's go for that. And after that we may include the policy aspects and the EPDP which is starting now or a different EPDP or PDP or whatever. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you, Switzerland. So we have US and Brazil and we have around five minutes.

ICANN
POLICY FORUM 62
PANAMA CITY
25–28 June 2018

US: Just wanted to support my colleague from Switzerland, sounds like a very rational approach. And in terms of representation on the EPDP, who is able to participate, I think there needs to be a clear focus on making sure that all interests are reflected in this PDP and that includes the users of WHOIS. And it's not clear to me based on what is currently proposed that that is taken fully into consideration. But yesterday's session seemed to be open to amending it to ensure all views are adequately represented.

MANAL ISMAIL, GAC CHAIR: Thank you, US.

BRAZIL: The question of access alongside the -- important to have clarity on the best way to be effective in incorporating the unified access model.

MANAL ISMAIL, GAC CHAIR: Thank you. Brazil. Would like to -- India.

INDIA: Just one more point apart from the requirement of the [indiscernible] for the IP -- I would like to point out that the requirement of copyrights should not be made [indiscernible] [reading] should not be made subject to formality as part of the [indiscernible] convention. Not mandated in India. So as far as the requirements of the servicing the data request from ip constituencies concerned, should not be made contingent upon the administration of the copyright.

LAUREEN KAPIN: One more slide, and we are mindful of the stop. I will turn this over to Cathrin and apologize in advance for shortchanging her.

CATHRIN BAUER-BULST: Not at all, thank you. GAC, in our usual efficient GAC manner we've managed to address most of the points on this slide, because the second cross community session will actually delve more deeply into the subject of access and accreditation, clearly the main concern for the GAC and we take notes of what you have said. A busy session, a total of eight panelists, and I will only have about seven minutes speaking time. So I will arrange with Laureen so that we place our messages in the best way.

And what I would say to the three questions really on substance, the most important characteristics we need in the accredited access model. How we assess the document model put forth by ICANN and how this should be implemented, we've already covered a lot of this now in the interventions, and I would add that access and accreditation should go together with the design of the WHOIS system. That this incidentally reflects what the data for example authorities in Europe stated in their April 11 letter to ICANN where they requested details to this. Any model that does not cover this would not meet the requirements that the article 29 working party and now EPDP has set out a comprehensive approach that takes into account the user rights throughout the process, and if you leave that to the individual judgment of each individual registry and registrar, you don't have the clear uniform [indiscernible] to know how their data is processed. I

ICANN
POLICY FORUM 62
PANAMA CITY
25–28 June 2018

think that is one other argument we could put forward in support of a unified comprehensive approach. I would be grateful if there is additional input you wish to make to any of these questions at the moment, pretty much already covered all of this, but if there's something specific you would like to raise for this session, there is your opportunity. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you, Cathrin. So comments? US.

US: Yes, I agree that I think we've covered everything substantively. But one question to my colleagues here in the room, as you you remember to say that the GAC is committed to working with this discussion document on a unified access model in terms of contributing to a way we can and agree to perhaps developing high level principles and assisting in the high level user groups, I think that could be constructive and sort out in terms of how, but being able to express our commitment I think would be helpful as part of this conversation. Thanks.

MANAL ISMAIL, GAC CHAIR: Thank you, US. Any comments or reactions to the US proposal?

SWITZERLAND: Thank you, Manal, and Jorge Cancio for the record. As to the US proposal, I was taking that for granted. So to say that we are working

ICANN
POLICY FORUM 62
PANAMA CITY
25–28 June 2018

on that basis. So I support that. And another idea which is a bit related to the process how we will discuss this would be something that was floated yesterday in the hit session. I think it was our colleague from India who proposed it, and I proposed something similar in the chat, is that we seek as close as possible interaction with the dpa's, especially with European dpa's, don't know if possible to request them kindly and very politely to a liaison person that could follow these working, closely. Otherwise we risk all these delays because now they're responding to something that came from ICANN in April and the response will come perhaps in July or -- and that is not really useful for such a dynamic process that we have here.

Some of if the GAC or some GAC members could go through that line and seek such a liaison from the European data protection authorities. I think that would really help the process. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you, very much, Jorge. So UK, can we make it very short? I think we need to move on to the presentation. UK, please.

UK: Thank you, Chair. I think in our conversation we need to welcome the initiative that the ICANN organization has done in producing this document. We have been looking for leadership from the organization to help the community move forward and make progress, and we have not seen some leadership and should encourage that and welcome it.

There are issues in the document which we need to discuss. Some of them have already been mentioned and I won't repeat those, but there are issues around the idea of authenticating both sides and their mandates and roles and responsibility, issues around the code of conduct and how we can avoid creating lots of new unnecessary bureaucracy, issues around whether users need to demonstrate every time they make a request that they have a legitimate purpose. Still no proposal in here to have a single point of access for all WHOIS data. The issues around the GAC advice on anonymity, et cetera. So a lot of issues we need to start looking at in detail, and as well agree with the comments of previous speakers on that.

But finally, we note the universal access model document proposes the [indiscernible] should have access to this data. We know that law enforcement is treated differently under GDPR. Law enforcement does not have to demonstrate legitimate purpose each time. So if there is wide acceptance of this difference, is it possible to make faster progress on law enforcement and use the updates to the [indiscernible] specification to move forward on that? We think given the urgency we face, that is an important question we should be raising. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you very much, UK. I think those are excellent points that we may also raise tomorrow with ICANN, because they will be presenting the unified access model here to the GAC, so it would be a good

opportunity to go through those points and clarify what needs clarification before providing our advice to the board. So thank you.

So we have to stop here and sincere apologies for the delay. So Brian, Steven, I'm not sure who else you have from IBC, please join us on the panel.

UNKNOWN SPEAKER: Good morning, thank you for making time for us today. I'm president of the intellectual property constituency. A sincere thank you to our GAC colleagues for allowing us time to present to you on the work we've been doing for months to develop a model for access to nonWHOIS data. I want to allow as much time as possible for discussion, will provide a brief overview of our agenda and allow each panelist to introduce themselves.

This morning we hope to quickly provide you with a high-level overview of the need our stakeholders have for access to WHOIS data and a picture of some of the things that can be wrong when unable to get the level of access we need for the data. Then an overview of efforts to date in developing a proposed accreditation access model for nonpublic WHOIS working and will provide overview of current work and the newly proposed unified access model framework that ICANN just published.

We will briefly touch on the recently published SO AC 101 paper and then identify some of our next steps in trying to move the work forward of getting a harmonized system for authentication

ICANN
POLICY FORUM 62
PANAMA CITY
25–28 June 2018

[indiscernible] and of course we will hope to leave time at the end for your questions and feedback.

With that brief overview, I will turn it over to Steve [indiscernible] president and CEO of net choice to continue our discussion.

UNKNOWN SPEAKER: Thank you, Brian, and members of the GAC, and if you could go to the next slide. Brian said we would try to paint a picture. To try to give you context as well as the passage of time, you see where we are today just a few notches to the right of May 25th and where we would need to be in a year and the temporary specification would be in operation and enforced by ICANN and at the end of the that year if the expedited policy process or EPDP is successful, it generates a new policy which would be implemented.

That picture talks about the temporary specification and a question for you, what does the temp spec in place now say about the access by governments, law enforcement? Specifically what does says was cited by Laureen and Cathrin on the previous panel and pointed out that the temporary spec in praise already requires registries and registrars. They must provide, and the word must was in upper case, reasonable access, so how is it supposed to be working, but how is it actually working.

You will be hearing from other groups today that in the right-hand corner where it says that any request or legitimate interest can make a request for the nonpublic registrar data but in red is the phrase that

gives the contract parties so much of a challenge and also presents a challenge to those of you that are requesting data and those of us requesting data. This notion that they can provide the data for a legitimate purpose unless overwritten by data subject rights and you can well imagine how difficult for hundreds of registrars and registries to independently make that determination with so little in the way of legal guidance, how well is that working right now, and I hope to return to give GAC members a particular focus on the way in which you can facilitate the completion after PDP that includes an accredited access model. Thank you.

UNKNOWN SPEAKER: Great, thank you so much Steve. We will now turn it over to Claudia, [indiscernible]

CLAUDIA: Thank you very much Brian. Wanted to start really by thanking the GAC for the help and the effort you have been putting in helping us get to the 27th May statement from the [indiscernible] very helpful to know there is discretion around enforce since ICANN is now cooperating and also working on a model. But your job is not finished. In fact we still need your help and as you know, and as Steve has been pointing out, on 17th of May, ICANN has adopted the temporary specification which contained this obligation whereby the registrant registry must give reasonable access to the request for data when there is a legitimate request for request for legitimate interest. But as Steve has been saying, not really working very well. And I can provide

example of that concerning AT&T, the company I've been working for. Repeatedly been filing a complaint against a domain name and struggling in accelerating our investigation. And it's taking a few weeks, so the investigation's still ongoing and I cannot deliver of course a lot of information around that, but we believe that for example this domain name will be used for infringement purposes although it has not been populated yet.

Another case that concerns us is recently we have been filing a udrp against a domain name using one of our brands. And what has been happening is that this domain name has been redirecting the users against two other websites. Some of them were legitimate, some other no, but they were also forcing users to download Google chrome or similar tools to be monitoring the websites we're accessing so clearly also security concerns.

So in this case it's very difficult for us nowadays to be able to and track data because we don't have access to those data although we are requesting it and registry and registrants are not applying GDPR rules in a uniform way. And I think the US representative has been pointing this before, no uniformity in application of the rules, no certainty in what is available, what information is not available, so very frustrating and difficult for companies that want to track bad actors on the Internet. And in case of cyber security risk, it can be very very dangerous because minutes or hours that are lost in an investigation can have repercussions on users globally. So we need your help to get legal clearance around that and to help us in getting access to those data which are really necessary and helpful. Thank you.

ICANN
POLICY FORUM 62
PANAMA CITY
25–28 June 2018

DAVID TAYLOR: I'm a [indistinct] panelist with WIPO and we do global enforcement for a lot of clients, been doing this for 20 years, seen how the world is changing with GDPR. One of the key elements -- plaintiff, you don't want to go after the innocent. Do a reverse WHOIS, you would find all the domain names that person has held. And this is just an example, hopefully it comes up, which we filed for e-mail a few years ago and the registrants in question had 1,153 domain names. This is the idea of what you are up against. And imagine if those were registered with registrars with individual data requests for each one. We would be charging hundreds of thousands of dollars for a complaint to try to put that together.

Next link. And then this is another case we filed for Facebook. And this is an interesting one. If you go further down there, you have the factual background, so various domain names you can see here using Facebook. And the respondents here, we identified one of the domain names and because the reverse WHOIS could identify the others and having got those, we could see malicious malware et cetera happening.   So that was the past and the present changed considerably since the 25th of May. And everything is behind the curtain, the radical change of the system does not have access in -- with it, we don't have a model, and I do a have a concern of who is benefiting most from the GDPR, Internet phishers, harder to go after that.

With regard to individual responses and requests filed quite a few since the 25th of May, varied response, some refusal to provide, some delay, some missing of the law. Many over ten days law. And not many filed at present but there will be a lot more. So we end up with a manual system, time heavy for everybody.

So looking to the future. The curtain drawn, necessity for access and accreditation system is clear and necessary as we have heard from the European Commission and has to be for legitimate purpose.

UNKNOWN SPEAKER: Thanks, David. I think that was a good setup for what I will speak about here.

One of our business members had additional data points to share with us.

UNKNOWN SPEAKER: Thank you, Brian. So this is Denise Michelle, I represent Facebook. Over the last week and a half or so, we've submitted over 1700 WHOIS reveal requests for GDPR legitimate purposes of intellectual property trademark infringement and abuse, 1736 to be exact. Those requests went to 167 different registrars around the world. Three of the registrars have provided the requested requests WHOIS information. Most registrars are not responding. The top registrars we've submitted the most number of reveal requests to include name cheap, two cows, go daddy, one on one Internet se, and enom. No responses from one on one. Enom states we need a subpoena. Go daddy states

we need a subpoena. Name cheap states they have forwarded the request to the domain name owners, and two [indiscernible] they will forward on our request. The request is a formal request that includes proof of global trademarks, cites the requisite GDPR text for legitimate uses. In each case we send a request, wait several days, send a second request, and again, wait. These requests are sent to the RA required abuse contact, sent to other places if directed by the registrar.

After several days, two requests, and no responses, we then forward a complaint to ICANN compliance for which we've also received no responses. Just wanted to give you a sense of how just one company has begun to try and get information for legitimate purposes. Thanks.

UNKNOWN SPEAKER: Thank you so much, Denise. I want to thank you, Claudia and David, for helping set up some of the challenges and issues that we're seeing under the temporary specification in place. And I would like to ask Fabricio to continue the discussion.

UNKNOWN SPEAKER: Thanks Brian and Claudia, David, and especially Denise, thanks, a great kick off. Anticipating that that was what we would receive and the machinations we would go through, before ICANN in Puerto Rico we set off as a group to put together an accreditation and access model. That model was circulated during ICANN61 Puerto Rico to both the org and the community. Since circulating that model, we've held four community consultations open to the entire community,

ICANN POLICY FORUM 62
PANAMA CITY
25–28 June 2018

supported by at times ICANN through Adobe Connect that does not include today's, that would make five. The model has iterated five times, we have published version 1.6 the week before ICANN published its model. To date we've received 84 comments to that model from various contracted parties, privacy, noncommercial stakeholders, et cetera, made over 131 edits to the model, and that model today in version 1.6 includes sections on accreditation approaches for subject safety and health organizations that were looking for further feedback on that section and accreditation approach for cyber security and [indiscernible] investigators, we understand the [indiscernible] will help put together a criteria section for next week. Accreditation and verification for compliance by parties. Technical solution today to access in a tiered world. Includes a draft, [indiscernible] and is a solution that is used today for rdap. Has a registration directory services authority section, specs, again, came from the community as technical solutions for today. And then contains an entire section on lawful basis for access for WHOIS data. So along the way there is a correlation between what the lawful basis are. Included as an attachment is a purpose statement built off of what ICANN originally put out during ICANN61 Puerto Rico, so a direct correlation between all of this.

One thing I wanted to note is that ICANN having put out its unified access model put out a chart and in the chart you will see that almost everything that ICANN has covered at least from a framework perspective is covered from the accreditation and access model. So where you see ICANN putting out a framework, you could actually then

turn directly to the accreditation access model we've been working on for several months to fill in the gaps.

One thing I would say, having received the unified access for model on the eve of this meeting, we are not set to next week, we will reformulate our entire format of our model to match and track what ICANN has done, easier for the community to look at what ICANN has done as a framework and look at the substance that we as a community have put together and don't have to rely on a chart and hoping that conversation is more easily facilitated in that manner. So you can expect once we put out this model, probably a week after this ICANN meeting, we will follow up with another community consultation so we can carry the conversation forward, and the hope being we end up with an accreditation access model that helps the community at large, not just the IPC/BC but the community leading up to my overview of the work being done today.

UNKNOWN SPEAKER: Great, thank you. I think it's really helpful to hear about the work going into this. Hoping we can turn to Susan and Greg for next steps to talk about ongoing efforts and the work at the SSEC.

Thank you, this is Susan indistinct, and we appreciate that ICANN provided this unified access model, recently released as stated and haven't completely digested it. But the GNSO council working hard to draft a charter for the EPDP that will address access method and also the temporary spec. We need to create all the necessary policies. This

is going to be quite a workload on the community. And everybody's input is extremely critical at this point.

And I also wanted to thank the ssec for their recent advisory recommendations, they're critical and sensible recommendations to allow all involved that ensure we continue to have a secure and stable Internet.

GREG AARON: My name is Greg Aaron, I'm representing the stability and security advisory committee. As Susan said, we released a paper last week on access to domain name registration data. We think a timely paper. Reiterating some old points in this paper and bringing up some new ones., SSEC has long believed -- access must comply with legal requirements about the GDPR also gives us provisions to allow that access by private parties.

It's essential to understand that the private security professionals are the ones who are defending the Internet and keeping it working on a day-to-day basis. Law enforcement is vital to these efforts but they take on only a tiny percentage of the cases after the fact, and a lot of times law enforcement relies on and works in partnership with security professionals who refer cases to them, provide them with information and tips and support their work. So domain name data is vitally important to those communities.

Now, the process for security purposes is allowed under GDPR, specifically recitals 47, 49, and 50, allow uses including preventing

fraud, ensuring network and information security, the ability to resist unlawful or malicious actions and reporting possible criminal acts or threats to public security to the authorities. And the article as 40-43 describe the codes of conduct and accreditation, parties can present credentials and assure that data can be accessed properly and in accordance with the law.

So several recommendations in this paper. The ones relevant to today are first, get the policy done. The community has always failed to have a policy that states the reasons for collecting and processing the data. The GDPR has shown us we have to get that done. One of the things this will do is help us identify legitimate users. So another recommendation is that the board should create -- support the creation of this accredited system where we can identify users that they will be bound to in terms and conditions so they will be using the data within the law. We also recommend that the ICANN organization ensure the creation of the support of and oversight of the technical access mechanism.

Basically what we are looking for is that these parties get them to agree to terms and conditions, and then they should have access that is easy, they should not have to negotiate individual access with the thousands of registries and registrars. We want to see an enforceable system where there is an compliance regime and then that will be applied to all the parties, those who apply the data and those using it.

Another recommendation is that the board should make sure that once we have these policies and structures in place, that that access is

ICANN
POLICY FORUM 62
PANAMA CITY
25–28 June 2018

guaranteed. One of the things that we write about in this paper is how registries and registrars engage in what is called rate limiting. They limit the number of queries that parties can make to the WHOIS systems. Some registries will only let you do two queries an hour to their WHOIS systems. What we're saying is once we have these structures, we're removing some of the need for that limiting because only authorized parties will be making the queries that is the sensitive data. So once you have decided who is legitimate, enforce it, and then it is not up to the registries or registrars to decide when a domain name can be queried.

Finally, we are suggesting that the board and the GNSO policy makers ensure that security practitioner, and law enforcement authorities have access to the full extent allowed by the applicable laws. Right now the temporary specification in our opinion does not do that. The situation is currently not balanced. The temporary specification was expedient, but it has resulted in over blocking and data not protected by the laws is no longer available. Our approach is we must comply with the law but is it our job to over comply with the law. Thank you.

SUSAN: This is Susan, again, can we get the two slides I brought in? So if you see this one, and this is for a client, a customer. So I actually redacted the domain name. But as you can see, there is no country, that's redacted for privacy. There's no registrant org, which in reviewing WHOIS records for the last few weeks that if a lot of registrars will provide the registrant org if there is one that has been listed there.

And so you are absolutely getting no information except on the registrar and the registry and the generated data.

This is pretty typical looking. What I am also finding in looking at WHOIS records is it's very hard to distinguish now between if it's been redacted due to GDPR or a privacy proxy registration, they're not labeled to indicate that way. So there's not much you can do with this.

Now I might in some cases be able to look hard and go okay, let me see, this is the registrar, let me go to their WHOIS URL; 50 percent of the time in my experience does not work. Go to their Web page and then find the WHOIS and then look it up. What implementation of the GDPR and the temporary spec has essentially done is remove one of the recommendations from the WHOIS review team, the first WHOIS review team we recommended a central place where you could go to look up a domain name, not having to figure out what the registrar is first and then through the WHOIS and then figure out where the WHOIS lookup is for this specific registrar. And that was this tool. This is ICANN's tool. Unfortunately, ICANN is being timed out by the registrars. So ICANN could not cannot do regular lookups, what is their compliance team relying on?

So I think there have been some side effects of GDPR that may not have been thought about, but we are not pushing this back to 2012 when the first review team made this recommendation and it was implemented fairly quickly to allow users, Internet users as a whole, to do a simple lookup instead of a convoluted process. So we are seeing

all kinds of consequences and inaccurate data, in my opinion, in the WHOIS record today.

UNKNOWN SPEAKER: Thank you, Susan for the concluding remarks. I think this presents the timeline under which Brian can conclude. And we would be happy to take questions. But on this chart, this EPDP, your colleagues on the public safety Working Group and interventions from this floor indicate a strong preference that the [indiscernible] please keep alive the notion there may need to be a second temporary specification that the board would approve in order to approve indistinct access, you have a vital role in facilitating discussions with the bottom row on this diagram.

The data protection board, European Commission, European governments, the goal dialogue to the regulators have issue what is need to accredit date the EPDP, legal guidance, specific with regard to accreditation and codes of conduct, and better still, binding opinions. You see, without that, ICANN org can't really turn to the contract parties and insist they honor your accredited access request. They need legal assurance, clearance so that registries and registrars can be forced to answer. So work to be done on the framework and much will be benefit greatly from the assistance of GAC members. Thank you. Brian?

ICANN
POLICY FORUM 62
PANAMA CITY
25–28 June 2018

UNKNOWN SPEAKER: Thank you, Steve. Many thanks to all of our panelists and our GAC colleagues for allowing us this time to join this morning. On closing, I want to urge you all to engage in this critical work to develop a workable model. We've seen this morning from examples, and those are just a few shared with you, the challenges we're already seeing in doing the important work to go after bad actors on the Internet, and we want to make sure that we don't have an environment that allows those bad actors to flourish and that allows cyber security professionals, ip holders and law enforcement to do their work, to go after bad actors.

This current fragmented system in place serves as a temporary specification for access is already not working, and we think the challenges and harms will actually compound the longer we are in a fragmented system.

There are two cross community sessions later today that will continue the discussion. The first one is from 3:15-4:45 and will focus on WHOIS policy post GDPR. The second will be from 5:00-6:30 today focusing on accreditation and access to nonpublic WHOIS data post GDPR. Our hope is many will join us and participate in those discussions.

Again, we want to thank you very much for making time for us today to talk about this important work and appreciate all the support that you have given already with regard this work. And Manal, I don't know if we have time for questions.

ICANN POLICY FORUM 62
PANAMA CITY
25–28 June 2018

MANAL ISMAIL, GAC CHAIR: Yeah, first of all, thank you very much for making the time and for this very informative and collaborative presentation. Yeah, unfortunately, we are running out of time. But, Kavous, if you have very short intervention, please, and then I hope we can keep the channels open and come back to you with any comments or questions later.

IRAN: First of all, the issue's very complex, for many of us. In summary, I tend to agree with Steve that we may need the second temporary specification. The time that we put here is very ambitious time. I don't think that we can get to that so quickly, we are talking four months. Then we have to have many, many things to do that. I think we should be very careful to this process, so we may need to discuss that. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you, Kavous. And I cannot stress more the importance of attending the two cross community sessions at the evening. Please make sure you are here, here in the GAC room as well. So thank you again, everyone. And this concludes our session on GDPR for GAC colleagues. Please remain seated. I'm sorry, we have to continue the following session. Thank you.

[END OF TRANSCRIPTION]

ICANN 62
POLICY FORUM
PANAMA CITY
25–28 June 2018