
BARCELONA – GAC: Post GDPR CC Session Discussion
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MANAL ISMAIL, GAC CHAIR: Welcome back, everyone. If you can please start taking your seats, we will be starting in a couple of minutes. Thank you.

So thank you for your patience and apologies for the delayed start. This is a continuation of our discussion on GDPR and just in light of the discussions that have just been concluded on the Cross Community Working Group session on GDPR. So maybe we can use the session to wrap up our views as GAC in light of our earlier discussions, but also in light of this most recent session that has just concluded. So should I hand over to Cathrin or Laureen? Cathrin, over to you, please.

CATHRIN BAUER-BULST: Yes, good afternoon, everyone. My name is Cathrin Bauer-Bulst. I'm one of the two co-chairs of the Public Safety Working Group. It's very good to see you all here for this session on the follow-up of the Cross Community Session on GDPR. And maybe to start out, I want to share our objectives for this session.

So we just have a half hour and what we would hope to do is first of all to do a quick recap of what just took place on the Cross Community Session, to also hear your impressions that you might wish to share about how the community discussions have evolved. And then, in the light of that, to then spend a couple of minutes looking back at the

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GDPR discussions during this week of meetings as this will be our last session focusing on the GDPR, to think back to the unified access model discussions, the work of the EPDP, and the different discussions that have taken place with the various stakeholder groups. And then on the basis of this, to look a little bit ahead at the next steps for the GAC. So what does that mean? For example, for what we might want to say in the communique or how we might want to participate in future discussions.

So those are the three points that we would hope to cover in this half hour. And maybe on the CC session we could kick off the discussion with a few of our own reflections from watching the discussion. Laureen, do you want to start us off?

LAUREEN KAPIN:

And I also wanted to give a big thank you, of course, to our very own members of the greater GAC community who participated in the panel, Chris Lewis-Evans, Cristina Monti, and Ashley Heineman, who were able to give great perspectives on working on the EPDP, on concerns of law enforcement and concerns about data protection issues. And I think together the three of them really added three unique perspectives that were very important to the Cross Community discussion.

So starting off, I thought one of the really powerful points that came out in the discussion was the real need for prompt work and driving towards an actual product in terms of the unified access model. Because there certainly was discussion about the specific negative

impact, the lack of a consistent and uniform approach is having on cybersecurity professionals and law enforcement interests.

There was also, underscored by Greg Aaron from the SSAC that -- and we heard about this yesterday as well, that many people on the frontlines of law enforcement and cybersecurity don't even know how to request the redacted information and that there exists many different policies on how to request this information. So I think that point was really driven home.

Also, on what I will term the plus, optimistic side, we heard from registrars and registries that there are some systems in place that actually are providing this access to the public, to law enforcement in a uniform way. We heard specifically from a UK registrar that has a dedicated system for UK law enforcement to make requests, they are authenticated in advance, and this sounds like something that really could be a model for registrars to look to as they deal with their local law enforcement.

And also we heard a statistic, at least from this registry, that, in fact, more than 96 percent, I think was the figure, more than 96 percent of the requests for access are actually granted. So what this shows us is not only is there a real urgent need for a unified access model, but certainly there are registrars now who are actually doing this, which means that community work should certainly continue and drive toward results as soon as possible.

And there's no reason to take a pause or somehow sequence the discussions and work on the unified access model only to take place

after the work of the Expedited Policy Development Process concludes. And there was an argument presented that if we start getting wrapped around the axel of the complicated access issues, that that will distract people into thinking that what really is wanted is for us to roll back the wheels of time and go back to fully open WHOIS access.

But the moderator of the panel quite effectively took the pulse of the audience by asking explicitly, and there were hundreds of people in the room. If you weren't there, you missed a very engaging discussion. The moderator, Bruce Tompkin, asked directly, who out there in this audience thinks we should go back to full access to WHOIS? And do you know how many raised their hand in that room full of hundreds? One person. Exactly. So that sort of dispels the myth that somehow if we grapple with access issues, that is code for wanting to go back to pre-GDPR days and trying to not comply with the law.

So I thought the panel was very effective that way. And, of course, this is something we want to take up in GAC advice. It has been the subject of prior GAC advice in Panama and in the proposed communique language, we're actually reiterating this past advice in the section of the communique that deals with follow-up on prior advice.

So I wanted to emphasize that as one of the key takeaways and maybe I will pass it onto Cathrin for other takeaways.

CATHRIN BAUER-BULST: Yes, I think, Laureen, you already covered the main ones that I also wanted to share. I think maybe just to complement very briefly, and Chris Lewis-Evans pointed out even during the panel that this community evolution towards a recognition that we do need to change the way we look at the WHOIS has really happened in quite a short period and in quite a dramatic way. So if you had asked a year ago, maybe the perspective in the audience would have been quite different. But now that this has been accepted that we do need to move to a new understanding of the WHOIS, I think that puts us in a better position for a constructive discussion on these issues.

And from what I witnessed from afar and today in terms of the discussions that have taken place over the course of this meeting, what I personally found encouraging was that a lot of them were more constructive in nature than discussions we've had previously. In particular, this Cross Community Session stands out to me as one that was particularly focused on moving forward rather than just on repeating entrenched positions. So that was very helpful.

And I think one thing that really stands out this time is that there is evidence being provided from all sorts of areas about the impact of WHOIS policy. There's evidence being provided about the impact of the temporary specifications, but people are also thinking about the impact of any future policy more generally and are giving that the necessary consideration, which we think is extremely helpful input now for the Policy Development Process.

And I think what we saw today was that even for those parts of the community who would prefer to defer the discussion on access, which we as the GAC, of course, don't necessarily agree with, even for those parts of the community, it seems that there is a recognition that there are important public policy interests that do require that access is provided. So there is a recognition that we do need to move on this issue eventually.

Now, of course, we as the GAC think, and I think it was shown again today, that there are not very strong arguments for deferring this discussion. Because even though you need to have a reflection process on which data elements would be collected and for which purposes, that can be separated from the discussion on the conditions for access to that data because then access would need to be provided to whatever data is proportionate to be provided access to. And if a data element was weeded out in the collection, then that's gone and doesn't need to be discussed. But that does not mean we have to defer the entire discussion on access.

So I think here the GAC's position was confirmed again today as being the appropriate way forward, in particular in light of the fact we have very little time left before the temporary specifications will expire, and any future consideration would really need to take place extremely quickly to be delivering in time.

Those are really our main takeaways from this session. We would welcome, of course, input from our three participants or from others. And I see Kavouss. Yes, please, Iran.

IRAN:

Thank you, Cathrin. Thank you, Laureen. Thank you, all. We, as GAC, we know what we want, but we have to convince others to recognize what we want. I don't believe that we could speak for ourselves only. We should look at how to fill up the gap, the gap of understanding. There are various views. One view is that we need immediately, as soon as possible, because there are some shortcomings for the law enforcement people to have access to the data.

The other said that yes, we could do it, but as according to the principle or timeline in the charter, they put it at the last step. Then people think that we may do it after that one year. Some other people, they say we may do it within the same team. Some other people say that we may do it with a different team, with different PDP. And today, I heard at least one person saying that we don't need a unified access model. So we have to fill up this gap.

What we believe, because we are not the author of the charter, we have to respect the charter, but nothing prevented the EPDP team to start to address the unified access model immediately after they put the initial report to the public comment. They have some time. They have 45 days. And within that, they could look at the matter. And the objective is that within that one year, everything should be finished. So the standard term nothing is agreed until everything is agreed may prevail.

However, it may not be appropriate to postpone it after and in particular not appropriate to give it to other PDP and so on so forth.

And some people are still pushing that there should be a coordination of the Policy Development Process that it was not agreed. So I think we need to convey our message in a more constructive and appropriate manner to the EPDP team and in order to start to reduce the gap between people.

There still are communities or stakeholders, they are pushing that we should postpone it as much as possible. Others, they don't have the same views. So we have to do this. I don't think that we should say this is what we want. Everyone knows that is what we want, but we have to have some sort of balance between what other people want in order to reach some sort of balance. And then based on that balance we have consensus. That's the idea, I think, the message. Thank you.

LAUREEN KAPIN:

Thank you, Kavouss. And I know the US wants to speak, but I just want to also clarify that the way access is reflected in the EPDP charter, that has a specific meaning and it is not synonymous with the unified access model, which actually refers to a whole different process and procedure.

So I just think it's important to make that distinction because when we're talking about the unified access model, that talks about a number of things that are outside the EPDP process like user groups, and setting forth the accreditation system for those group, and the rules for those groups, just by way of example. But, Ashley, next. But your general point, of course, is well taken that we need to be mindful

in our approach of how we can persuade people that our view has merit.

UNITED STATES:

Thank you. Ashley with the U.S. I just want to admire Kavouss' optimism. And I have to say, I am not as optimistic. I do think that there is built in the charter of the EPDP the opportunity to talk about access models and even the universal access model. But since it's not a gating question and that conversation has to happen after the gating questions have been covered, perhaps I'm being a bit of a pessimist here, but I don't even see this EPDP group being able to start the conversation. And that's because while the report is going to be issued in November, that report is not going to be the final policy that we're proposing. I don't think it's even going to be close to it.

So I think us continuing to advocate, perhaps in more constructive ways to take Kavouss' point, I think we need to continue advocating that we do have a parallel conversation, if nothing else, just to make sure we can start to understand what we're talking about.

But I do take the point that perhaps we need to be a little bit softer in the rhetoric and more constructive in our tone to perhaps make our views better understood and perhaps even accepted. Thank you.

LAUREEN KAPIN:

Other takeaways from the Cross Community Session, particularly with an eye about how this influences both the content and tone of our communicate language on this issue?

CATHRIN BAUER-BULST: Right, so I think thank you for the feedback on that session which I think already brought us back to the larger perspective of discussions this week. And some main takeaways that we saw there, I'll kick us off here, are first of all, how helpful it is to have evidence of both the impact of the changes that have been implemented already and of the potential impact of future arrangements. So looking ahead and trying to see what the future policy might create in terms of impact both on the contracted parties and on WHOIS users and on the rest of the community is extremely helpful and that I think is something that we saw here that might be further developed at the next ICANN meetings.

Again, overall the tone seems to have been a little more constructive and collaborative than it had been at recent meetings. And I think what has also become clearer is that it's not necessarily -- or it has become clearer that GDPR in and of itself is not the issue, even though it is seen by some as such. But we see that that number is dwindling and that generally the appreciation that the GDPR does not prohibit data processing but rather simply requires that the processing is proportionate in view of the interference with the fundamental right to privacy of an individual. And that data processing cannot be performed willy nilly without any consideration. I think most people have now come around to that, and we think that that's a very good starting point for developing the right kind of policy. Kavouss, please.

IRAN: Thank you, Cathrin. Perhaps I was not clear. I was not referring to after the release of the initial report we start working on unified access model. It's that we start to work on the access, because we identified what data we have to collect, how to process the data, where or how we disclose the data or transfer data and then disclose, and how we store the data. Then we have to see what is the access to all these things. I was referring to the access after the completion of the initial report. I was not referring to the unified access model. Thank you.

CATHRIN BAUER-BULST: So thank you all for the input provided also here and we will now take this back and reflect on how best to integrate this language into the communicate and what might be appropriate ways for the GAC to now clarify its position in a constructive and positive way vis a vis the rest of the community. Thank you all for your attention.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Cathrin and thank you, Lauren. So this concludes this session on GDPR. And if you just give us a couple of minutes until we get the communicate, the current version of the communicate on the screen, and then we can move on with the communicate discussion. Meanwhile, the co-chairs of the CCWG may be a little bit late, so we will work on the communicate language and we will pause whenever they come in.

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