Q&A Pod Transcript
Plenary Session: Impact of Regulatory Developments on ICANN Policy Topics
Monday, 14 June 2021 12:30-14:00 CEST

1. How does the EC define "domain name registration data"?How does the EC define "accurate and complete" data?, *Reg Levy Tucows*

   -This not precisely defined in the NIS2 proposal, but could be defined in the policies and procedures adopted by registries and entities providing registration services and point in turn to industry and ICANN definitions

2. Is there a clear definition of DNS operator? There are hundreds of thousands of DNSes that are authoritative only for their own domain names and they are sometimes set up by registrar control panels. Does the NIS2 legislation differentiate between a single domain name DNS and a large DNS operator that provides DNS as a service?, *John McCormac – HosterStats.com*

   -There is a definition in the NIS2 proposal: 'DNS service provider' means an entity that provides recursive or authoritative domain name resolution services to internet end-users and other DNS service providers'

3. Will NIS2 regulate the root and root server operators based outside of the EEA, but with instances in Europe and reachable by EU citizens?, *Susan Chalmers*

   -NIS2 applies to operators providing services in the EU, so that would be the criterion to define which operators are concerned; this is something that may be further specified in the co-legislative process

4. I am a lawyer in Taiwan advising the local DNS operator. Would each of the ccTLD operators be deemed an intermediary service provider under DSA and therefore subject to the requirements such as appointing a legal representative, etc?, *Ken-Ying Tseng*

   -If they provide services in the EU

5. What's the role of the EC vis a vis the COE and/or how do these interplay?, *Anonymous Attendee*

   -With regard to the new 2nd Protocol to the Budapest Convention, for the 26 Parties that are also EU member States the European Commission has been negotiating it. In total there were 66 States involved in preparing the Protocol.

6. Where the current public whois indicates that a domain is registered outside a law enforcement's jurisdiction, what additional information do you think is necessary to be disclosed to the extra-judicial law enforcement agent?, *Reg Levy Tucows*

-Live answered

7. Despite its best efforts, ICANN has not been able to get actionable guidance with respect to specific questions about GDPR. Does NIS2 contain a mechanism to address this problem? Or does the fact that it is a Directive mean that it will be harder to understand its requirements across EU member states?, *Becky Burr*

   -Such guidance should come from European Data Protection authorities who are in charge of GDPR implementation. NIS2 is about cybersecurity and does not provide guidance on GDPR implementation.

8. How do you propose that you will find out where a domain is hosted out of in order to determine territoriality for bringing a law enforcement action?, *Reg Levy Tucows*

   -Live answered

9. To Alexander Seeger: How will the parties to the Cybercrime Conveenforced ntion sanction enforce article 14 (minimal data protection)? How will violations been sanctioned (also considering that roundabout 20000 rulings of the European Court of Human Rights in Strasbourg remain unimplemented by CoE member states and the non CoE members certainly do not subject to the ECHR anyway), *Monika Ermert*

   -Hallo Monika, in case I am not able to respond live: the implementation of Article 14 will be assessed under Article 23. Morever, a Party may suspend data transfers in case of serious and systematic misuse. Not sure why this would be related to decisions of the ECtHR.

10. Each of the 5 sections of the Article 23 starts with the phrase "Member States shall ensure." Why is the NIS telling "member states" to ensure something that ICANN already ensures?, *Wafa Dahmani*

    -We think important to provide a legal basis for the collection and accessibility of domain name registration data in the EU. As NIS2 is a Directive, EU Member States will implement it. Our idea is that the implementation is based on policies developed in ICANN (for what concerns gTLDs).

11. What plan does ICANN have for the implementation of the national legislation of individual countries, not only the EU regulation?, *Viacheslav Erokhin*

    -Live answered

12. To Oliveir Bringer - But technicallly, doesn't each CCTLD operator provide it services to the whole world?, *Ken-Ying Tseng*

-Live answered

13. Who are legitimate access seekers mentioned in NIS2?, *Iveta Skujina*

-Access seekers who have a legal basis to request access to personal registration data, examples provided in NIS2 are 'competent authorities under Union or national law for the prevention, investigation or prosecution of criminal offences, CERTs, (CSIRTs, and as regards the data of their clients to providers of electronic communications networks and services and providers of cybersecurity technologies and services acting on behalf of those clients'.

14. thank you for the clear answer., *Wafa Dahmani*

-Live answered

15. '@Oliver, I of course understand the difference between GDPR and NIS2. Who will be responsible for providing guidance on NIS?, *Becky Burr*

-It will be the Commission and a cooperation group among EU Member States.

16. '@Olivier The poor definition DNS operators seems down to the lack of a good understanding of DNS operation and the different types of DNS. The NIS2 scope is problematic but there does seem to be some work being done on addressing the problem. The scope and definition are problems., *John McCormac – HosterStats.com*

-Live answered

17. '@Olivier there are hundreds of thousands of single domain name DNSes. Then there are people running their own DNSes and then there are web developers and hosters and registrars. The DNS ecology is quite complex., *John McCormac – HosterStats.com*

-Live answered

18. Thanks Olivier. *John McCormac – HosterStats.com*

19. Thanks Olivier. *Iveta Skujina*

20. Does the NIS 2 contemplate situations where a registrar charges a fee for disclosures, potentially discouraging submissions that would otherwise be requested by response providers, law enforcement or others to protect the public interest?, *Mason Cole*

-Live answered

21. What are the panelists' views on the following: National or regional regulatory initiatives typically affect both ccTLDs and gTLDs. How can ICANN interact in legislative processes while staying within the limits of their mandate and avoid conflict with ccTLD interests or positions?, *Peter Van Roste*

    -Live answered

22. Based on these conversations, it seems irresponsible to develop Whois policy that will likely conflict with approaching law -- do the speakers think ICANN should pause EPDP work to accommodate governmental developments we've discussed here?, *Fabricio Vayra*

    -Live answered

23. As you know Pornography contents and services are considered illegal in some countries' laws based on their social and cultural values and respecting Family values , especially child pornography, How ICANN could help in this regards to fight against illegal activity and establishment of domain name management mechanism(for example domain name system for adult xxx content) according to national laws at DNS level? *Mokabberi*

    -Live answered

24. It is welcome that both NIS2D and 2nd Additional Protocol to Buda pest Convention define legal bases for the disclosure of WHOIS data. However, neither seem to clarify the impact of GDPR Art22 on WHOIS processing. Until it has been confirmed whether or not Art22 applies to WHOIS disclosure, we should expect that manual inspection of disclosure requests will continue, meaning that many high-impact cybersecurity use cases will remain unavailable. What is the position of the EC on GDPR Art22? If the position is that Art22 does not apply, how is EC planning to ensure that this position is represented in member state law when the Directive is transposed?, *Mark Svancarek*

    -Live answered

25. Does the Budapest Protocol discussed apply only to requesting authorties with a legal mandate under criminal law or are other types of national authorities also captured under the protocol? (E.g. authorities in signatory countries with compliance and enforcement mandates under civil law)., *Sharon Hamilton*

    -Live answered

26. Frankly speaking, even with ICANN's multi-stake holder model, it would be difficult to convince the non-EU countries/authorities to adopt a similar Budapest model. The law makers would be forced to handle different types of Internet issues, such as IP infringement, fake news, etc. at the same time and just give

up. Perhaps to resolve this issue, shouldn't EU relax its GDPR requirements to some extent?, *Ken-Ying Tseng*

- Well, there lots of non-European countries that have decided to follow the Budapest Convention Model. Thus, not sure I understand your concern....
At least we found a common ground on data protection in this Protocol

27. could you please raise my question too??, *Mokabberi*

- Done Mokabberi, thank you for your patience.

28. Why is NIS focusing on dns as opposed to hosting? Why are Hosters not subjected to the same requirements the dns service providers are?, *Volker Greimann*

- I would think they are part of the cloud service providers, which are also covered by NIS2, but to be checked

29. As a newcomer, I wonder if there is any organizational structure in the EU to analyze the impact of EU Regulation in ICANN policies, which might collaborate with GAC. Thank you very much in advance., *Ana Maldonado Cid (GAC-ES)*

- the Commission actively participates in the GAC and follows ICANN policy development. I forwarded the question to the chair of the GAC.