
COPENHAGEN – GAC meeting on the Registry Directory Services
Tuesday, March 14, 2017 – 12:00 to 12:30 CET
ICANN58 | Copenhagen, Denmark

CHAIR SCHNEIDER: Thank you, Bart.

We will go to the registration directory services, agenda item 24 on our agenda. So I see Cathrin is already on her way here so let me not lose time and give you the floor right away.

Thank you.

CATHRIN BAUER-BULST: All right. Hello again, everyone, and welcome to our agenda point on the registration directory services.

Next slide, please.

So we have two points on the agenda for this item, and you will find two separate briefings in your briefing pack. The first thing we would like to briefly discuss with you is on the plans for the Registration Directory Service review team which is about to start its work, and then secondly on the ongoing policy development process for our next generation registration directory service.

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Next slide, please.

So the first thing we would like to discuss with you today is the Registration Directory Service review. As you are aware, this review is a regular review mandated by the ICANN bylaws. We conduct it every five years to assess whether the current implementation meets the legitimate needs of law enforcement, promotes consumer trust, and safeguards registrant data.

Now, you may remember that given the really quite significant workload across all the parts of the community, when this review process was kicked off last year, a proposal was made by ICANN to try and limit the workload of the review team by limiting the scope of the review to a postmortem analysis of the implementation of the 2012 report outcomes. So to basically not engage in a new -- fully new review process but, rather, to assess whether the recommendations previously made had been implemented and to what extent they were still outstanding.

This was discussed at the Hyderabad meeting by different parts of the community, and some parts of the community felt a bit uncomfortable with this limitation of the scope for several reasons. First of all, because while we're working on new structures, it's not clear how long it will take to implement

those. And, secondly, because it was felt that this did not really meet the commitment under the bylaws.

Amongst -- amongst other -- yeah, maybe we can go to the next slide. Yeah.

So amongst other community parts, the GAC chair also shared the concerns by the GAC and the PSWG; namely, that we should possibly leave it to the review team to assess together the scope of the review, and that we should not limit the review scope up front. And then the GNSO also advanced an alternative proposal for the scope of the review in early January, which we would like to share with you here. It's in your briefing pack, but maybe we can also briefly pull it up on the screen.

And while this is being pulled up, the reason why I'm asking this is the first task of the RDS review team now will be to decide on the scope. And for the -- for the GAC, the members that have been nominated to the RDS review team will need to take a position on the scope, and the scope is to be decided by May of this year. So before the next time we meet. And so we wanted to discuss with you now what we should -- what position should be taken on behalf of the GAC on the scope. And on behalf of the Public Safety Working Group, we've analyzed the scope proposed by the GNSO and actually think that it makes a lot of sense.

So basically the GNSO proposes that the RDS review team in implementing the bylaws commitment should assess whether the efforts currently under way on RDS are on target to meet the commitment under the bylaws; to assess how they might be improved and better coordinated, especially the new policy development processes and implementation work in several areas, which as we all know has sometimes been quite difficult to follow. We had one high-interest topic session on this in Hyderabad which was very well received, and what we heard from many parts of the community that there's a lot of confusion around all the different work streams going on that are relevant to WHOIS and RDS.

The GNSO further proposes to also take into account the ongoing work on implementation by the privacy and proxy services review team; to also look at the progress of cross-validation implementation, and to review compliance enforcement actions more generally.

Then in the interest of transparency and accountability, they also want the review team to assess the availability of transparent data concerning enforcement of contractual obligations of WHOIS, to assess the value of timing of RDAP, the new data access protocol as a replacement protocol, and to then possibly take some more time to look at the -- any other

steps that ICANN has taken to implement the recommendations of the original WHOIS Review Team final report.

And then the final point that they put forward is that the review team should ensure that no duplication of work should be done of work that is the responsibility under the new RDS policy development team -- or working group, rather.

And what we have put forward for your consideration is to possibly enable us to support these GNSO recommendations, perhaps except for the last one because while we agree on the substance, we find that it is a bit difficult at this point to -- to ensure that nothing that the RDS review team would look at overlaps with the RDS policy development working group's work. So what we would suggest to you is to consider endorsing these first eight recommendations on the scope of the review for us to take forward as part of our discussions on what the scope of the review should be.

I hope I now haven't thoroughly confused everyone and would be very grateful for any opinions or suggestions that you would have on this topic and whether you think that this should be taken forward, whether there are other points that should be included in the scope or whether there are points to be excluded.

And I know many of you already were here at the working group meeting this morning where we discussed this and where there was general -- a general understanding that this scope makes sense and this is also something the GAC could consider pursuing.

So if there are no further comments, perhaps we could propose leaving a bit of time for comments? Thomas, how should we take this forward? Oh, yeah, Kavouss, please.

IRAN:

Yes, Madam. Thank you very much. I have been in your working group but I think to be in a position to support or otherwise, we need to have some discussions in GAC. I don't think that in a few minutes we'll be in a position to give a long-sum approach yes or no. So perhaps if there is any time available during today and tomorrow, maybe. But otherwise, it will be difficult to give an unqualified support for that.

Thank you.

UNITED STATES:

Yes, thank you. As one of the GAC members who raised concerns originally about the scope being limited without further discussion amongst the community, the U.S. is supportive of

contributing in some way in terms of trying it define the scope at the community level.

So we support in principle the effort and happy with the comment from my colleague from Iran in terms of having some more opportunity to review. But in principle, we're supportive.

Thanks.

CATHRIN BAUER-BULST: Thank you, Ashley.

So should we....

So would anyone have fundamental problems with the approach suggested by the GNSO?

So what we would then propose is to take this forward as the initial position of the GAC representatives in the process, to be further discussed, of course, with the community. And that brings me to a very important point. So maybe we can go back to the slides. Namely, how we will structure the input and feedback to the GAC on this.

So as you may remember, the call for volunteers was first issued in October and is actually still open. It will close on the 22nd of March, this month. However, for the GAC, three volunteers have been appointed to take part in this review on part of the GAC,

and that's Lili Sun from INTERPOL, Thomas Walden from the U.S. DOJ, and then myself from the European Commission. All three of us are members of the Public Safety Working Group. And what we would suggest for your consideration is that we basically take a leaf from the book of the CCT review team, which had a similar task in terms of the -- where it fits in the ICANN processes, so that we would regularly report back to you at ICANN meetings and update you on developments in the interim with a view to seeking a position. As this is not a policy development process, the interaction will be somewhat different but we do expect that there will be decisive points where the GAC should be taking an opinion. And if there are any suggestions that you have for how we should seek your inputs and how we should involve the GAC as a whole in this process, we'd be very grateful to hear them now.

Kavouss, please.

IRAN:

Yes, our procedure internal to participate in any group is the following. No one participates on behalf of GAC. They participate in the process as a more or less liaison or something to contribute to that, but no one could have -- express the views of GAC in total unless it is discussed in GAC. So that is the process.

Thank you.

CATHRIN BAUER-BULST: That is understood. And that's why I'm trying to seek your feedback on how to establish the positions that we, your liaisons, can take in the process.

So any suggestions on how this should be done would be very much appreciated.

So otherwise, if there are no further suggestions at this point, I would propose that we follow the same processes for the CCT review. I see nodding. So we will seek to provide regular updates both through the list and face to face at the meetings and seek your endorsement if and when there's any need to take any position.

All right. Thank you very much.

Then the second point I just briefly want to update you on is the work of the next generation. RDS PDP WG. That's a great acronym right there. So as you know, the group has been working for almost a year and a half now. We are actively involved. So there are seven GAC members and four PSWG representatives in the working group either actively following or following as observers. And we have some update on the current status of the work here.

There is still a lot of discussion going on around the purpose of the exercise and the purpose of the new RDS, and that discussion I think received some very helpful contributions at this ICANN meeting through the presence of some members of the data protection community, the data protection commissioners who held several events here yesterday and who were also part of -- whom came to our PSWG meeting this morning where we were able to discuss, to continue the conversation on how to take into account data protection considerations in drafting the new RDS PDP and also in the work that the Public Safety Working Group does to support the GAC in this process. And we very much look forward to an ongoing conversation with them on these issues so that the PSWG can present you with positions that also take these concerns into account.

And does anybody -- I would just like to invite you all to comment on this now or provide any input you would like to share with us now on this RDS PDP and its work going forward, and in particular, as concerns data protection issues.

All right.

Yeah, so if there's no comments on this, that gives me two minutes to speak a bit more to the issues on this slide.

So as you're probably aware, the GAC has pronounced itself several times on these issues, notably through the 2007 principles that we put forward on gTLD WHOIS services, which basically called for a balance of privacy and law enforcement and other public interests in attribution of responsibility for online content or services. And now one of the key solutions that is being addressed in the work of the RDS PDP is to look at whether there is potential for a gated and tiered access system so that not all WHOIS data or RDS data would be publicly available in the future but, rather, that possibly a small subset that does not amount to personal data or including some personal data that is yet to be considered would be publicly available, and the rest would be subject to gated access, or, in fact, that notice it would be available at all any longer. And of course there are several considerations around these gated access solutions, notably surrounding the issues of how people would be accredited to receive access to that information and how those systems could take account of a general public interest in being informed about who you deal with online and who is responsible for a given website.

So those are some of the challenges that the RDS is now struggling with. And if a tiered and gated access system were to be implemented, we would also have to give consideration to how we could possibly create an accreditation system to enable

access, to give access to law enforcement, civil and criminal and also to other interested actors to the data that is available in the then-closed RDS, and how -- who, if anybody, would be enabled on our behalf to basically authorize governments in the executive and any other relevant actors to take access to that data.

And let me just flag that in creating a gated and tiered access, there are other ramifications that this has outside of data protection law. So if this decision were taken to better account for privacy interests and data protection interests, that would have sort of inadvertent consequences for some states for jurisdiction purposes because once you start creating closed access systems, some states currently do not have the procedural rules in place to take direct access to such systems where the data is stored in another jurisdiction.

So that raises the complexity this already complex issue. And we've -- in the Public Safety Working Group meeting, we've also encouraged the colleagues from the data protection expert side to come and help us work on solutions that can work both from the data protection perspective but also from the jurisdiction and law enforcement perspective.

Do you have any questions or comments on this part?

Yes, Kavouss.

IRAN: Yes. I apologize for my ignorance. What is tiered access? What is gated access? Who provide accreditation? What are the channel for accreditation? Why accreditation?

So could we have something, but not now in one minute. A half a page somewhere explanation so the people understand.

Sorry, we are overloaded of all of these description, names, and so on, so forth. At least I don't know. Everybody knows, thank you very much, but I don't know what means tiered access and what is gated access.

Thank you.

CATHRIN BAUER-BULST: Thank you, Kavouss. An excellent question. I'm sure many people are unaware. Those are the -- exactly those questions the RDS PDP is now struggling with.

So just in a nutshell, the current system is completely public, so anybody can access all the information that is out there. It may not be accurate, but there is information.

If you have a tiered access system, that would mean that not all the information is available, but, rather, one part of it would still be available publicly and the rest might not be available.

If you have gated access, that means that you basically have to log in to receive access to the information.

But we'd be happy to provide a more detailed briefing. There is some information in your briefing pack, and we will look into complementing that further in preparing the next meeting.

Any other comments or questions?

Yes, Thomas, please.

NETHERLANDS:

I don't know if you're involved in this particular part or not yet, I hope, but my question is also looking at the presentations we had yesterday from some data commissioners, some people from the Council of Europe, INTERPOL, et cetera, in which I -- it's not because I'm European, but I think the framework of the principles which you use in gathering, processing, publishing data, which also are in the Conventions 108, which are in European directive but I think much more in the convention, as a framework which undersigned by many countries, outside Europe also, are these, as a kind of principle, being brought into this process to test the mechanisms, whether they are fair, proportionate, let's say have a consensus (indiscernible) to all these, let's say, the principles we heard yesterday as we know very well from the public-policy side.

Thank you.

CATHRIN BAUER-BULST: Yes. So to my understanding, they are -- the Council of Europe is actively involved. Colleagues of mine from the European Commission are also following the group. So this is being highlighted. And nonetheless, it appears that there's a lot more work to be done because while the concepts are very -- I think there is a lot of synergies that can be achieved there in terms of defining the right principles that can apply, there's still further need to clarify what it really means to have, for example, a purpose for data processing, and so on.

So I think it appears that the group is on a good way, but there's still a lot more consideration to be given to this issue.

It seems that on the whole, there is a lot of openness for giving further consideration also to the principles of both Convention 108 and the EU data protection framework.

Russia, please.

RUSSIAN FEDERATION: Okay. One question related to a sentence, the gated or tiered access, this may create jurisdiction issues. We believe that it's not "may." It exactly create jurisdiction issues for transborder

data, data access. And my question, has RDS working group some formal mechanism how to solve these issues and contact with appropriate bodies in countries to analyze these jurisdiction issues? Because our -- our Russian colleagues, registries, participate in this group and provide some information, but we are not aware how (indiscernible) this information as a government and how local practice and local legislation will be taken in account in the work of this working group.

CATHRIN BAUER-BULST: So I have to admit I'm one of the observers on the working group but not actively following all part of it, but to my understanding, at the moment the working group has not yet come to that stage. Rather, they are in the process of considering general principles or purposes this should apply to any new RDS system and have not yet taken a position on gated or tiered access, nor looked at the ramifications in terms of the jurisdiction issues that some -- or many countries might, in fact, experience in getting access to the data.

But if there is any members of the working group here who would like to speak in more detail to this, please speak up now.

Do you want to come up here?

So we're lucky to have Chuck Gomes, the chair of the working group.

CHUCK GOMES:

Thank you, Cathrin. And thanks to all of you.

I do have the privilege, I guess, of being the chair of the -- of this particular working group for an issue that has haunted us for most of ICANN's history.

But let me, first of all, compliment you. You have been observing quite thoroughly, and your descriptions and answers to the questions have been excellent. And you're right, we're not to that stage yet.

Just for those that don't remember, if you've seen it before, there are three phases to our working group. The first one is the development of requirements. The second one is development of policy to meet the requirements. And the third one is implementation of whatever policy we decide to recommend.

So -- And we're not to the gated access stage yet. We will get to that. It's one of the first five issues that we have to deal with. And a real good report, and you'll remember recently there was an Expert Working Group report, it's a key part of -- a key document that we're required in our charter to use. And we're

using lots of other documents as well, that talks about gated access further.

And we haven't gotten there yet. Cathrin is absolutely right. Right now we are focusing on purpose. And, again, you're absolutely right. I was encouraged by the reinforcement of what we're doing now by the data commissioners yesterday, as I sat in your meeting here. That was very helpful.

And we are trying to finalize a purpose statement for a new registration data directory services.

Have I answered the question enough? Are there other questions that I can respond to? I don't want to take your time. But, if I can help, I'm more than happy to.

CATHRIN BAUER-BULST: Russia, does that answer your question?

RUSSIA: For the time, yes.

CATHRIN BAUER-BULST: This is probably an issue that we should give further consideration to in the GAC as the work of the working group proceeds to the policy development phase.

CHUCK GOMES: We're quite a ways from a policy development phase. Because we really haven't finalized any specific requirements yet. Once we get the purpose statement identified, we will continue in agreeing on key concepts that will help us decide on the requirements.

But, really, that will happen after we get through the first five areas, which includes gated access, as you know.

The three we're working on right now are users and purposes, data protection and privacy, and data elements. Once we develop requirements on those three, then we go to the other two in the first five, which includes gated access.

And so, once we get those, we will prepare a first initial report. And we will provide that to the community for public comment. Like always happens -- and I think most of you are familiar with this by now. We will then incorporate public comments into that initial report and then send it to the GNSO Council. And they will direct us then in terms of whether we proceed, what the next steps are.

CATHRIN BAUER-BULST: Thank you very much, Chuck. That's extremely helpful to have the real expertise from the chair here.

I think we're going to have to close it here and give you all a well-deserved lunch break. I turn it back to Thomas. Thank you for your attention.

CHAIR SCHNEIDER: Thank you. Then I would say this is the lunch break. Thank you. See you in the afternoon.

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