
SAN JUAN – Joint Meeting: GAC & NCSG
Monday, March 12, 2018 - 08:30 to 09:00 AST
ICANN61 | San Juan, Puerto Rico

UNKNOWN SPEAKER: Good morning. ICANN61. Monday, March 12th. This is the joint meeting of GAC and NCSG.

MANAL ISMAIL: So, good morning, everyone. We'll be starting in a minute. Thank you. [AUDIO BREAK]

So, good morning, everyone. And thank you for making it at this early hour. We're starting our GAC discussions on agenda item 19, which is our meeting with the Non-Commercial Stakeholders' Group, scheduled for 8:30 on March 12th. So, please, if we -- you can take your seats, so that we can start our discussions. So, thank you for the Non-Commercial Stakeholders' Group for joining us for the second time. We had a meeting, also, in Abu Dhabi. And thank you for making it again.

So, this the agenda -- we're going to have a little bit of introduction on the Non-Commercial Stakeholders' Group, and then, talk about rights, protection mechanisms, and freedom of expression -- and privacy. And I think there is also GDPR issues,

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and then, we're going to wrap, hopefully, in 30 minutes before the opening. Thank you. So, over to you, Julf. Please.

JULF HELSINGIUS:

Thank you. So, Julf Helsingius for the record -- I'm here as the GNSO liaison to the GAC, so I'm not actually part of this discussion. I will disappear from the stage as soon as I've done the introductions. But the GNSO that responsible for global domain names has a lot of different constituencies one of the stronger constituencies inside the GNSO is the Non-Commercial constituency, and they are here today to try to present themselves. Good luck, Farzaneh.

FARZANEH BADIEI:

Thank you very much, Julf. Hi everyone. My name is Farzaneh Badiei. I am the chair of Non-Commercial Stakeholder Group, and we really appreciate these meetings with GAC to tell you more about us and what we do within ICANN. The Non-Commercial Stakeholder Group is the only non-commercial group at the Generic Name Supporting Organization. And we protect and advance the interest of non-commercial domain-name registrants.

We comprise of a various civil society organizations, academics, and non-commercial individuals. Our members are actively

engaged in protecting civil rights and digital rights. And they are from various countries over -- we have members from over 120 countries, and some of the organizations that are members, as an example, the Electronic Frontier Foundation; there is the Access Now, Article 19, Association for Progressive Communication.

We are very influential and effective in policymaking at GNSO. We get involved various policy processes, and we try to infuse our values in these processes. But let me tell you a little bit about what are our values and how some of them converge with the governments' values. We are here to protect the freedom of expression at ICANN. And we are here to see fair processes in place.

We also care about privacy protection of domain name registrants in WHOIS. And we think that the governments, also, are here to -- are there for protecting the same values. With that introduction, I'm going to ask -- if we could ask -- well, first of all, if you have any questions or would like to discuss something -- if not, then we can go to Stephanie, first, perhaps, about privacy? [CROSSTALK] If Stephanie could go, because privacy could take longer. Yeah? Okay. So, if there are no questions, we can just immediately go. Thank you.

STEPHANIE PERRIN: Thanks very much. My name is Stephanie Perrin. I've been volunteering in ICANN in the NCSG for the last five years. But it probably might be useful to point out that I did have a 30-year career in the Canadian government, working mostly in privacy, starting in -- bless me -- 1984. Good year for privacy.

So, I'm quite familiar with the government concerns and the tensions between privacy and law enforcement. It's our view in the NCSG that the GDPR is bringing action that has been a long time coming, and that, in fact, there's nothing really new in the GDPR that wasn't in the European directive, except the 4% fines. And that is what is motivating, of course, this frenzied activity.

If I could just pick one item that we are concerned about and that, perhaps, we might find common ground with the GAC -- it is the accreditation system. Some of us in NCSG are working on the notion of ISO standards for accreditation, so that the groups -- it's a well-known problem in data-protection circles -- getting access to ISP information, getting access to Telco information, and now, once the WHOIS is shielded, and even now, in the context of privacy proxy shielded registrant information, there's a need to know who you're giving the data to.

Now, there will be liability for the registrars and registries when they give that data to them. So, it's really important that there be an accreditation system that facilitates, through the use of

the RDAP protocol, a narrow search, that facilitates law enforcement's needs for anonymous search in certain circumstances, and also respects the constitutional right for eventual disclosure in countries where that constitutional right exists. And anyone who participates at the Council of Europe is well aware that the Council of Europe Cybercrime Budapest discussions in the working group -- that tension has been part of those discussions for 20 years, right? So, this is a well-known problem, as well.

Nevertheless, an ISO standard for receiving data, for recipients of data, would detail the requirements: who they are; the limited access within the organization, because we do not believe in an all-you-can-eat, layered access; where you get down to one layer and then everybody in your company can access everything in that layer. That's not what we mean by tiered-access. But in this instance, it would facilitate a targeted response. There would be prescriptions for how you manage data, just like we have in government, you know? In government, we have many countries that have data-protection law, have lists of accredited law enforcement agencies that are able to get free access to data.

The GAC, of course, will know best who those law enforcement agencies are, and that may be a function that we think the GAC

should do, but I think -- in accrediting all of the private-sector members, we think that's a multistakeholder operation, and we would like to contribute this concept of the standards. That's not a quick fix that will be done by May, but it is a better fix. And I don't think we should come up with stopgap measures just because this has been left on the table as an issue for lo, these many years.

I was part of the experts working group that look at RDS, and, you know, we know knew there were going to be accreditation issues, back in 2013. And the RDAP protocol was certainly being worked on throughout that period. So, it's regrettable that we haven't made more progress, but that doesn't mean we can't start now. So, I think -- is that enough from me, in terms of a contribution, here?

FARZANEH BADIEI: If you could talk a little bit about NCSG's position on the Model 3 and what we think with [inaudible].

STEPHANIE PERRIN: Sure. We're very grateful to ICANN for providing the analysis of the legal positions. Sadly, we were all getting on planes by the time we got it. We have issued about a four-page statement, I guess, a little longer than that, now, on our position -- our

preliminary reaction to the material that has come. As I say, tiered access is quite a huge chunk of our concern.

The other issues that we would like to point out: No. 1, because we won't get a proper tiered-access system in time, I think it might be easier for law enforcement -- because law enforcement agencies that access data right now -- and the reality is, they want the financial data from the registrars, so they're fairly well-known. That could be brought together fairly quickly to facilitate not interfering with law enforcement, but the other efforts are going to take awhile.

In the meantime, that can't be public; it has to be protected. So, the door No. 3, it would be the model we would have picked in the simpler version. What else in that vast tome of comments do we have that I should focus on?

FARZANEH BADIEI: [inaudible] purpose --

STEPHANIE PERRIN: The purpose, yes.

FARZANEH BADIEI: And the legitimate interests of the groups that should be legally grounded.

STEPHANIE PERRIN: Okay. How much time have I got? [CROSSTALK] Purpose. Purpose has been a big -- I think that would be the one we need to talk about the most. I participate in the RDS, as does Kathy here. There has been an effort in the RDS group to try to expand purpose to include public interests. We don't even really define public interests at ICANN. Well, so the notion that anything can fit under public interests is not consistent with the way data-protection law looks at public interests.

That is a narrow provision for, for instance, releasing the names of people missing after a Tsunami -- that's what public interests mean -- it's in the public interest of releasing data in that. It's not a plank that you can use to release everything. So, there is a great deal of tension in the RDS group between those of us who take that view, which I think is fact, and those who wish to, sort of, fit every possible use case that is ever developed through that door.

Now, the other problem that we've had at ICANN is that we've always started with use cases, or needs of third-party actors to get data from a system that is really between the registrant, the

registrar, the registry, and ICANN. And because we're a multistakeholder organization, I would argue that any stakeholder feels they have the right to put their demands on the table. That's not what happens under data-protection law in countries.

The third parties don't go, "Well, I want to see that, too." Imagine that in the banking context, where every retailer would want to know whether your check is going to be good, or whether there's a problem with your credit card. They don't get that, because we have banking privacy.

Now, I realize it's not as sensitive here -- same thing with medical data -- but, still, the principle remains that there's no fundamental public interest in exposing the information of registrants. And that produces a risk. And this frustrates us enormously, because we do have data-security experts in our groups, and there's never an admission that exposing the information of a woman: her address; her phone number; her basement operation, where she's running a small business; there's never a recognition that that exposes her to threat, to spam, to harassment, to, you know, possible physical damage -- stalking.

During the privacy-proxy effort, a couple of years ago, where we were accrediting the privacy-proxy services, the registrars did a

very quick survey of their members. We got 20,000 submissions, and NCSG did a massive effort, looking at the comments on these, and we gathered up all of the comments from -- there were a lot of women who were being stalked after the doxing scandal with the Gamergate.

So, you know, we had real evidence -- if somewhat qualitative, it's not a good quantitative survey, but we've never really done enough research on the damage that comes from exposure of the data. That enough on purpose?

FARZANEH BADIEI:

I just have to add, we also hope for more attention to privacy and data-protection in GAC, and we would like to continuing conversation with GAC about privacy issues in WHOIS. Thank you.

MANAL ISMAIL:

Thank you, Farzaneh, and thanks, Stephanie. And I think maybe we can pause here for any questions or remarks and then, we can proceed. So, Niue, please. Pär, go ahead.

PÄR BRUMARK:

So, the mic is working. Hi. Welcome. My name is Pär Brumark, GAC representative, government of Niue. You said something

here about law enforcement getting information, financial information -- I didn't really get that, because they don't get the financial information.

STEPHANIE PERRIN: It's our understanding that when they're doing major criminal investigations, the data that is really interesting is the financial data, the IP address, the banking stuff. That is obviously not in the WHOIS. I should say that we don't look at WHOIS. WHOIS is the disclosure instrument. It is where the focus has been at ICANN, but we look at the entire ecosystem.

So, that data is collected by the registrars. They go to the WHOIS to find out who the registrar is, if they can do that through the reseller system -- and we would argue that the reseller system needs to be more transparent, so you can find the registrar easily -- but then at that point, they're looking for the deeper financial data, right? And that's how they detect the crime. So, that's what I mean -- never has there been a discussion of the financial data being released.

PÄR BRUMARK: That is in a broader investigation, it's not through ICANN or WHOIS.

STEPHANIE PERRIN: Right. Right. But here's another problem that we find and, hopefully, this will come with a greater transparency that we're seeing in the analysis here is, we hear about the law enforcement act, and we are aware of the 2007 documents after the Octopus Conference, where they have given us lists of everything that's needed.

But if you put that in a tiered-access system, you'll find that, you know, the preliminary level that will help law enforcement get to what they need is pretty easy, I would say. It's the deeper levels, where they already get it by going to the registrar, and we do not have evidence that registrars are turning law enforcement away when it's a legitimate, serious investigation. They cooperate.

PÄR BRUMARK: Yeah. They do -- one more thing, if I may ask, how do you see the difference? Because you mentioned this woman -- where you can see all her information, about her small store, etc. -- how does that, except for the email address, perhaps -- how does that differ from a phonebook, basically? Because the same information is in a phonebook.

STEPHANIE PERRIN: Yes, but -- depending on the country you're in, phonebooks are not transparent. Now, obviously, Google Maps has changed a lot, and in our country, we have Canada 411. But phonebooks have always been an area of contention, particularly in the context of cellular phones, because of the immediacy, because of the charges -- and so, it's not the case that phonebooks are public. You can have a private number. We've always allowed private numbers.

You know, historically, there are huge debates at the OECD and at all of the major data-protection groups on the transparency regarding phonebooks. And some of the early opinions that were given by the Article 29 Group were exactly on this subject of the reverse directory. I know in our country, law enforcement tried for about -- at least 10 years, to get access to cellular details, and, you know, when these get back up to the courts, the courts are frequently finding that this is too intrusive to make it public.

PÄR BRUMARK: Yeah, well, it's like you say -- it differs from country to country. But, for Sweden, for example, everything is transparent when it comes to these details, so the police are allowed to go in and look at the [inaudible] and everything to see the data

afterwards. But it differs. Yes, but I just wanted to hear your opinion. I know that there are great differences. Yeah.

MANAL ISMAIL: So, thank you, Pär. And thank you, Stephanie. So, any further questions from GAC colleagues? So, yeah, CTU, please go ahead.

NIGEL CASSIMIRE: Good morning. Nigel Cassimire from the CTU, Caribbean Telecommunications Union. You drew an example of the woman doing business from her basement kind of thing, and what the public interest is in knowing her address or whatever, but I ask the question, if she's doing business and maybe selling a product or service to the public, is it not in the public interest for someone to be able to know who they are dealing with, who they are doing business with?

STEPHANIE PERRIN: It's our view that this is an area where governments should regulate. The European Union is regulated and made it mandatory that if you're conducting electronic commerce that you have to have the data about who you are in your establishment, up on the website -- we think that's the

appropriate approach. ICANN is not supposed to be dabbling in content. What you're actually doing with your domain name is none of ICANN's business, excepting so far as we're talking about trademark issues.

So, we really would like to draw that bright line. Now, with respect to women having a home business or selling quilts -- there is this immediate sort of illusion that if you have something on a website that means you're doing electronic commerce. It's not the case. You might be just -- it's just like a sign -- it's like an advertisement. So, let's say -- my favorite example was always Steph's Homemade Quilts, back when I was in data-protection in government. If I'm running that from my business, I'm not shipping quilts out over the internet. I'm not selling over the internet. I'm saying, "Hey, I'm going to be at this quilt fair next month."

That's not electronic commerce; that's speech. And it differs, again. If we differ on phonebooks, the differences between jurisdictions and how we regulate commerce in countries, is massive. I know Canada's a really great example, because we've got 14 provinces, and that is a provincial jurisdiction regulating commerce. So, you know, it's not for the federal government to try to harmonize that. Trust me. So, it's the same in all countries. You could be a sole proprietor; you don't have to list

as a business to be a sole proprietor in Canada. You can incorporate.

Now, incorporation, that's obviously very different, and that's where regulations that are coming at the federal level should come in here and kick in. I think, actually, sometimes, there's a feeling that the civil society's in contention with GAC. No, actually, we would like you to act in your powers and do your thing.

And that's, certainly in this context, figuring out ecommerce is over to you governments, and figuring out police forces -- and by police forces, that goes down to the dog catchers, because, as we know, there could be kennels doing business where the seizure of animals belongs to the dog catcher or the Humane Society. This is an area where you have the expertise, in your jurisdictions. And the massive differences in each jurisdiction, we think that still belongs to governments. Thanks. Did that answer your question? Yeah. Thank you.

MANAL ISMAIL:

Thank you very much, Stephanie. And, yeah, this is a topic of interest to everyone. We've been discussing this, as well, and, regarding the accreditation, the GAC is willing to provide advice or play a facilitation role, rather than getting into the day-to-day

operation thing. And we are having this discussion, also, with the Board, and it's an open meeting, so you're most welcome to attend, as well. So, moving -- is it Kathy now? Please. Yes.

KATHY KLEIMAN:

Thank you, Manal. My name is Kathy Kleiman, and I'm very pleased to be with you. I go back to the beginning of the Non-Commercial Stakeholder Group. And, in fact, I go back to the beginning of ICANN, so, if you have questions about history, I'm happy to answer to them. I've been asked to present the Non-Commercial Stakeholder Group's view on domain names and free expression.

And what the Non-Commercial Stakeholder Group has advocated is that domain names belong to everyone, and that domain names are used for our most valuable speech and expression. We use them for government speech. We use them for educational speech, university speech, research speech, personal speech, political speech, and, of course, commercial speech.

We use them in our organizations, so our members in the Non-Commercial Stakeholder Group use domain names to post information about their ethnic work, their religious work, their gender work, their consumer work -- and it's the ideas and the

communication that are being reached out across the internet from the organizations using domain names. So, Non-Commercial Stakeholder Group also believes that there's a right to use dictionary words and names in domain names.

So, if you think of words like sun, apple, orange, tide, Smith, Wendy -- even McDonald -- these are common names, common terms, well-known trademarks. So, Non-Commercial Stakeholder Group has worked for fair and balanced policies in ICANN that create fair rules for domain-name allocation for all of the commercial and non-commercial expression. Fair rules for allocation of domain names and for takedown of domain names that protect both non-commercial rights, human rights, free expression, and trademark rights.

So, we invite discussion with you on these topics. I am co-chair of a group called the Rights Protection Mechanisms Policy Development Process Working Group. This is one of the three big PDPs you've heard about in the GNSO making rules for the new generic top-level domains, as well as the existing generic top-level domains.

A number of people in the working group are here -- I'd like you to raise your hand, everyone in the working group -- so, you can see that there are people here to talk to, if you'd like to talk about this PDP. And we'd like to talk with you more about fair

and balanced policies, protection of rights, protection mechanism, and non-commercial free expression. Thank you very much.

MANAL ISMAIL: Thank you very much, Kathy. So, any questions or comments? Yes, please. And, please, introduce yourself. Thank you.

PER-AKE WECKSELL: My name is Per-Ake Wecksell. I'm from the Swedish National Police. I'm representing, also, Europol, fighting against child rape -- child sexual abuse -- child sexual exploitation. I have question for Kathy. I was at your meeting yesterday, and I heard your views, and I'd like to have your views on domains used by predators, take into account that it's used to have sexual interests in kids -- is this freedom of speech?

KATHY KLEIMAN: First, thank you. Thank you for coming to the meetings of the GNSO, and it's good to see you again. We hope that more members of the GAC will come to meetings of the GNSO. If the speech is illegal, it's illegal. Take it down. That's not freedom of expression. Thanks.

PER-AKE WECKSELL: Thank you, Kathy.

MANAL ISMAIL: Thank you. Yes, please.

SUSAN PAYNE: Thank you. Yeah. Hi, my name is Susan Payne. I'm not a member of the GAC. I hope it's okay to ask a question since I'm here. I was wondering if you could explain, Kathy, to the governments who are here, why you think it's appropriate for ICANN to be the venue to litigate or question norms of international trademark law -- why you think this is the appropriate venue for that conversation to take place.

KATHY KLEIMAN: Susan, could you identify where you're from, please?

SUSAN PAYNE: Identify where I'm from? Yeah. I'm an IP lawyer. I'm from London. I work for a company called Valideus and Com Laude. We're a registrar and a domain-name consultancy.

KATHY KLEIMAN: Thank you. So, as I mentioned, I go back to the beginning, the founding of ICANN. And you probably know the history that the Department of Commerce put out two papers, two RFPs -- and I know we go into the welcome ceremony any moment now, so, we can come back and talk about this further -- the green paper and then the white paper. And the white paper became the principles of ICANN.

And from the beginning there was the tension of trademark rights and free expression. A tension that exists in all of our national laws, as privacy and law enforcement exists in all of our national laws. And that tension was built into the founding principles of ICANN, and so, we are here continuing that and continuing the question of, what is a domain name and how to create fair and balanced principles around the allocation and takedown of domain names. Thank you.

MANAL ISMAIL: Thank you. So, yeah, we need to be going to the opening now, so if -- do you want any closing remarks -- anything at all before we close? [CROSSTALK] Yes. Farzaneh, please, go ahead.

FARZANEH BADIEI: I just wanted to -- I know this is a complicated and a last bit of decision, but one of the things that we've been discussing is the

jurisdiction group recommendations. And these recommendations help access to DNS for sanctioned countries, and we see that the Board of ICANN has not been really supportive in its comments to adopt these recommendations. So, I do ask GAC to reconsider and consider actually endorsing these recommendation by the group. Thank you.

MANAL ISMAIL:

Thank you. Thank you, Farzaneh. Thanks, Kathy. And thanks, Stephanie. Thank you very much, and thanks to the Non-Commercial Stakeholder Group for reaching out to the governments. So, thank you, everyone. This concludes our meeting with the Non-Commercial Stakeholders' Group. We are now moving to the opening. We have cross-community sessions, all the day, and the gala. And we're reconvening here tomorrow at 8:30. Thank you.

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