**Report of Workshop Session on “ICANN, GDPR and the WHOIS” on Thursday, 11th April.**

**Summary**

This Session, organised by the Internet Corporation for Assigned Names and Numbers (ICANN) Cross Community Working Group on Internet Governance (CCWG-IG), was entirely focussed on the work of the ICANN Community in developing policy and regulatory measures to ensure that contracted Registries and Registrars are compliant with the European Union’s (EU) General Data Protection Regulation (GDPR) which came into force in May 2018. As such it primarily concentrated on the ongoing Expedited Policy Development Process (EPDP).

The session was moderated by (Chair, CCWG-IG) **Olivier Crepin-Leblond.**

**Detail**

In his introduction, the Moderator, **Olivier Crepin-Leblond gave a brief overview of the ICANN structure (the three entities of the Organisation (staff); Board and Community) and what a policy development process was. He also briefly discussed the genesis of the EU’s GDPR (developed and negotiated over a number of years) and why it had an effect on ICANN’s work, noting the extra-territorial affect it had given that many overseas Registries and Registrars processed personal data of European residents. He briefly touched on the “WHOIS” – essentially a distributed database on which generic domain names issues were linked to their owner – and how it was affected by the implementation of the GDPR.**

**Keith Drazek** (Chair, Council of the Generic Name Supporting Organisation (GNSO), ICANN) spoke about the role of the GNSO – a body made up of a number of stakeholders including civil society representatives, businesses, registries and registrars - within ICANN that is responsible for policy development regarding generic Top-Level Domains (gTLD). He noted the importance of the GNSO, in this context, given that registrars and registries have contracts with ICANN and are bound by the policies developed by the GNSO.

Keith explained that ICANN (through a direction of the Board) had issued a “Temporary Specification” in May 2018 in ensuring that (pursuant to legal advice received and discussions with European lawmakers) that the contracted registries and registrars were in compliance with the GDPR which came into effect in the same month. He noted that a Temporary Specification is only valid for 12 months before it is either replaced (with a permanent policy solution), adapted to new regulatory circumstances, or simply removed. The Board had thus requested the GNSO to initiate a policy process to ensure that after 12 months the contracted parties were still subject to rules in compliance with the GDPR in terms of their collection and publication of personal registrant data on the WHOIS. Thus, the GNSO Council had 12 months to develop a new regulation which they initiated through introducing a charter for the (so-called) Expedited Policy Development Process (EPDP).

Additionally, the Council decided to work in two phases. The first phase related to confirming, or not, the Temporary Specification as a Consensus Policy by 25 May 2019; while the second phase would look into the related policy recommendations and discuss a standardised access model to non-public registration data held in the WHOIS.

**Kurt Pritz** (Former Chair of the EPDP) reiterated the process that led to the Temporary Specification and noted that ICANN’s existing (pre-May 2018) policy regarding the publication of registration data (‘WHOIS data’) was non-compliant with the GDPR. Pritz further mentioned that Temporary Specifications are only effective for one year in order to safeguard ICANN’s bottom-up multistakeholder model.

Kurt reiterated that a permanent solution to the specification was needed given that law enforcement agencies, cybersecurity specialists and other third parties had legitimate needs to have access to registrants’ data for legal and other reasons. Additionally, Kurt mentioned the desire of third parties to have a consistent approach to access these types of information. Kurt also mentioned the challenges faced by the EPDP team which rapidly needed to familiarise itself with the provisions and complexities of the GDPR (a significant piece of work in itself).

He noted that an “Expedited” Policy Development Process retains all the safeguards inherent in a normal policy-making process except for the introductory report which is usually required to initiate the Policy Development Process (PDP). The EPDP Team was composed of registries and registrars and representatives from all other stakeholder groups, including governments. The EPDP organised two public comment periods, published comment analysis and review, prepared formal initial and final reports, maintained formal consensus to ascertain support, and held both physical and virtual transparent meetings that were accessible to the public.

Kurt outlined the EPDP team’s approach, including a review of the lawful purposes for the processing of data according to the GDPR requirements, and the development of revised purposes with their corresponding legal bases. The team came up with seven purposes for processing non-public registrant data, including consent, the necessity to perform a contract or enabling other legitimate uses (i.e. law enforcement) access.

Kurt explained that in addition to the identified legal, lawful and legitimate purposes for the processing of data, the EPDP Team identified and approved over twenty other policy recommendations. These include recommendations pertaining to the development of a standardised model for the lawful disclosure of non-public registration data in the second phase of the process, the negotiation of data protection agreements between ICANN and contracting parties and the mandate that ICANN and GNSO examine existing ICANN policies for GDPR compliance.

Finally, he described some of the lessons learned in the process, these including the timely use of professional mediation in the process, the value of face-to-face meetings, and the value of transparency of the process for observers; these among other important factors which contributed to this positive use of the multistakeholder model.

**Olivier** then spoke about phase two of the EPDP and the next steps to be undertaken.

He noted that the public comment period on the final GNSO report (for Phase 1 of the EPDP) will close on 17 April 2019 and that the ICANN Board will make the decision of whether to adopt the report as the Consensus Policy for implementation before 25 May 2019. Furthermore, he mentioned that an ICANN Implementation Review Team (IRT) will work on the development of operational and contractual details to implement the policies. Olivier noted that between the expiration of the Temporary Specification after 25 May 2019 and the full implementation of the IRT’s work, contracting parties will have the choice to comply with either the Temporary Specification or the new Consensus Policy.

On Phase 2 he referenced the Mind Map (produced for the EPDP) which identified all the different (and interconnecting) issues that would need to be addressed during the work in Phase 2; these included:

* Systems for access for non-public data
* Technical standards for access
* Credentials for access
* Terms of access
* Geographical issues (ie application of GDPR in non-EU areas)
* Legal and non-legal persons

He noted that there was no specific timeframe for this work though it was recognised that there was an urgent need for adopting agreed access arrangements. It was noted that the GNSO was still to recruit a chair for Phase 2 of the work.

He invited all interested parties to follow or contribute to the work of the EPDP (or simply reads about it) by following <https://gnso.icann.org/en/group-activities/active/gtld-registration-data-epdp>

In the brief **discussion** that followed, Ambassador Karklins asked about whether composition of the team for Phase 1 and 2 are same; Kurt noted in the main it was; with perhaps 20% change; there was then a brief dialogue on a few further details of the Mind Map; .

**Nigel Hickson** (Government Engagement Team, ICANN) thanked the speakers for their great efforts in leading this process and highlighted the complexity of the process. He recognised the process as a testament to the multistakeholder process. Finally, he recognised the work of the CCWG IG and gave details of membership (open to all).

GE, ICANN; April; 2019