
BARCELONA – GAC: WHOIS & GDPR: Discussion with IPC and NCSG

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MANAL ISMAIL, GAC CHAIR: So, thank you everyone for your patience. We're now starting our session on GDPR with other parts of the community. Will be meeting NCSG, we already have here Amr Elsadr and Milton Mueller. We will be also joined during the second half of this session by IPC, the Intellectual Property Constituency colleagues. So, with this, thank you again for coming, and should I hand over to someone here? Is it Milton yourself or Amr?

MILTON MUELLER: Well, good morning, everybody. My name is Milton Mueller and I'm one of the members of the Non-Commercial Stakeholders Group. And the NCSG, as you probably know, is made up of users of the domain system where a constituency and stakeholder group within the GNSO. So, we're part of the policy making organ for DNS within ICANN. And we represent non-commercial users such as human rights groups, individual rights groups, civil liberties groups, privacy advocates, artistic groups, universities, education, those kinds of things. This is my colleague Amr, from Egypt and I'm from Georgia Institute of Technology in the United States. Why are we here? Well, we're part of the GNSO and we had been telling ICANN for 15 to 18 years that the WHOIS was illegal under most privacy laws, and specifically under European law. These warnings were ignored for a long time until the GDPR forced them to

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take privacy in the WHOIS seriously, because of the penalties essentially.

So, we're in the somewhat ironic position of going before the GAC, the organ which represents governments within ICANN, and upholding the influence of governmental policy decision, namely the GDPR. And for some reason I find that many governments here are not so friendly to the idea that a government law should be controlling what ICANN does. We're going to explain why we think -- actually we'll be explaining what is actually going on with the EPDP because you've just been given some misinformation about that. And we want to make sure you have an understanding of both the process and the substantive disagreements.

So, in terms of procedure the EPDP has two tasks. One of them is prioritizing its charter. The first task, which is supposed to do very quickly, is to come up with a legitimate community-based policy to replace the temporary specification that the ICANN board put into place on an emergency basis. Now, in terms of the substance of the temp spec, the temporary specification, we are pretty happy with it, in the sense that it did redact information that should not be public. It remove from indiscriminate public access personally identifiable information and made the WHOIS conform to the GDPR in the short term. So, what the EPDP is supposed to be doing is to work out the details and define a permanent policy to replace that temporary specification in terms of what is actually displayed on the public WHOIS and what is redacted.

As a second step, in this process, we are supposed to come up with a policy to govern access to the non-public WHOIS data. What should more accurately be called the sensitive personal data of domain name registrants. And there's a series of gateway questions we call them, which is supposed to be answered before we start talking about how we define the access mechanism. So, one of the problems we've run into is that many of the stakeholder groups are concerned primarily about how they're going to get access, and they kind of want to skip over the first part of the EPDP's mission, which is to replace the temporary specification with a permanent policy. And the method we're going about to handle the issue of the temp spec is we have laboriously gone through each purpose that ICANN has in collecting data, which is what we're supposed to do under the GDPR.

We've tried to define, 'What is the reason? Why is ICANN collecting this information? How is necessary to support its mission of a globally compatible secure and stable domain name system?' And in going through those purposes, I think we've made significant process, however, we keep bumping up against the access issue, because the people who are very concerned about access want to define -- in effect they want to define access as part of the mission of collecting data.

And that's a little bit problematic because it doesn't make a lot of sense to say, "I'm collecting this data in order to disclose it." That doesn't really tell you what data you need. It doesn't tell the user why you're collecting their data. And in general, it's kind of an illogical purpose to say, "We just want to collect data, so that we can give it away for anybody, for any purpose."

So we had a lot of debates about that and I think we have actually gotten to the point where we are -- we had a purpose, we call it purpose B, which says, "One of the reasons we're collecting data is in order to allow people who have -- a third party, who have a legitimate interest in various things to be able to contact or identify the registrants." And the formulation of this purpose, which is a compromise between the very interest involved, different stakeholders, is still being settled, but I think yesterday, would you say that we --

AMR ELSADR: Made progress.

MILTON MUELLER: -- we made progress. Yes. We made progress on it. So once we have settled on purpose B, then we'll be in the position to finish the temp spec revisions, and then we will define an access mechanism. Now, I will make -- So, one of the things that you heard, I think, in some comments earlier was that, "Oh, we can't wait to define an access mechanism. We can't have ICANN policy about that." This is just wrong. The fact of matter is we have to wait. The process of defining an access mechanism is a second step in EPDP process. And it requires a policy. You can't just have ICANN willy nilly deciding that it's going to provide access. And we think, in many ways, the ICANN organization has misled many people in this room by initiating this Unified Access Model discussion.

Because, again, we're not supposed to be settling the access issue until we have redefined WHOIS under the GDPR. That's Step 2. We don't

understand why the board is initiating a discussion on access model, much less why they'd say it has to be the Unified model, which is, again, that's a policy decision, it has to be made by the community. So, don't get misled by that. When ICANN issues this document about Unified Access Model, and you spend a lot of time discussing it, you're kind of wasting your time, because that document has no standing in this process. It really doesn't. Until and unless we define the temp spec -- redefine temp spec and settle policy's governing access, we're not going to have an access model. And we don't know yet whether the community supports a Unified Access Model or some other access model. That's a legitimate debate. We should have that discussion. But it's Step 2 in the process.

So, I want to have some time for back and forth and questions, and I also want to allow Amr to introduce himself, and he has some comments to make specifically.

AMR ELSADR:

Thanks, Milton. And thanks, Manal, and to all of you for having us here today. My name is Amr, I'm from Egypt. I'm a member of the Non-Commercial Stakeholder Group, and I'm also representing my stakeholder group on the EPDP team. Just to follow up a little on what Milton said. The way we've been going about our business on the EPDP team is to first identify the data elements required for processing activities in terms of registration data for gTLD domain names. And these processing acti-- so, we identify the data elements, we identify the processing activities, which include collection, any form of

processing by processors, whether it be registrars or registries, and as well as disclosure or transfer of this data. So, all of these are processing activities that we've been considering. And in terms of making this GDPR compliant, they also have to have legal basis. So, the EPDP team has been working very hard on this.

And I would like to also address a general concern that seems to be circulating amongst community regarding NCSG's position. That, you know, we are totally anti access. We're not. We have been for years, as Milton said, advocating for registrant privacy and we've been doing this in the context of what already exists in terms of privacy and data protection law out there. Pre-GDPR, this wasn't a sort of a harmonious or universal approach. We've been working on this since -- I mean, at least personally, I've been involved in this since way back in days of Thick WHOIS.

At the time, the Thick WHOIS Working Group determined that we lacked the capacity to address data protection issues in compliance with law. It was unclear to us how this could be done. It's a little clearer now and so we're just really following up on what we've been working on for many years. But the question of access, as a processing activity, there are legal basis for access. And we believe this to be true. There are ICANN consensus policies developed by GNSO that require access to registration data. And we have no problem in allowing this. But again, this has to go through the rigorous process of identifying what data elements are involved, what the processing activities are involved, and what the legal basis are.

So, this are the natural or logical steps we need to take in order to work out access to this data. And we can't get to this until we answer a lot of the gating questions in the charter for the EPDP team. So, we can't really answer the question of what data will be accessible until we understand what data will be available. And so that's a relatively logical, I think, reason to delay discussions on access. So, I don't want to, sort of, raise questions myself, I would rather, if we get questions from all of you on the issues that matter to you all, and we'll be happy to shed some light on our perspectives on these.

MANAL ISMAIL, GAC CHAIR:

Thank you, Milton, and thank you, Amr. I mean, it's only fair that different parts of the community would have different interests and different pressing priorities, so -- And we're here to try and work together and find some common grounds. And again, access is a pressing issue for the GAC, and I'm sure we are not wasting our time because at least we're going to be ready whenever this comes into the process, if it is not already there. I mean, I'm not part of the EPDP discussions, but we are continuously briefed by our colleagues there. And I hope we can ultimately find an agreed common way forward.

So, I have a request for the floor from the US and then Iran very briefly, and meanwhile, let me also ask IPC, our guests from IPC maybe to start joining the panel until we finalize this part of the session. So, US please go ahead.

ASHLEY HEINEMAN:

Thank you. Ashley Heineman, with the GAC. I just wanted to comment, while I can follow the logic that's being put forward, I think what's been a problem for this effort to date, is that we all do represent very different perspectives. And I think another problem we face is that, in large part, we are all very entrenched in our positions and if we find it very hard to recognize and try to understand the position of the other parties. Access is very important to governments, for a number of reasons. For our own uses, but as well as for our constituencies that we represent.

I think, in terms of the Universal Access Model, and the discussions that are happening there, I think, perhaps you don't understand, which is these are very early conversations, this is not a formal process. They are looking at questions, they're raising questions. They are looking at different options and ways to approach it. I think everyone would agree that all of the different elements involved in the Universal Access Model are very complicated. We are talking about things like authentication, certification. I mean, a whole different array of things that are potentially on the table to facilitate such a model.

So, discussing early on these different aspects I don't think is problematic at all. And I hope at some point we can maybe come together and understand rather than looking at this being some kind of nefarious activity is actually something that is just the beginning of a conversation and beginning of a formalized process. Thank you.

MANAL ISMAIL, GAC CHAIR:

Thank -- Okay, can we take the -- Yes. And so that we can wrap up because we need to start the IPC session as well. So, Kavouss, please.

KAVOUSS ARASTEH:

Yes, we thank distinguished Professor MuellerMueller and his colleagues on the podium and others on the floor for coming and sharing their understanding with us. I have not heard that NCSG, Non-Commercial Stakeholder Group is anti access. I have not heard that. I don't know where you have heard that. But we have different views, totally different views. Our requirement is different than yours. We are a legitimate representative of governments, and the governments have serious concerns if we do not have access that for us is one of the most top priorities.

Ashley clearly mentioned that, and we are looking for that. It's called Unified Reliable Access. Someone called it standardized, we are not in favor of calling it standardized, we are calling it harmonized access. We don't go to that detail. We truly agree with some colleagues saying that this should be done when all gating questions are answered. But, it doesn't mean that we should postpone it without any reasons. It should be available on time before the temporary specification becomes definitive.

And we don't want that -- give this to another group. We want the group EPDP finish the whole situation, including Unified Harmonized Access. Your requirements are different, our requirements are different. What we request you, I do not say like others that you don't understand us. I don't allow myself to say to anybody that does not understand. I say that your concerns is not what we looking for. We're looking for our own

concerns. And we have seen that our concerns is not respected. You refer to the document of the ICANN Board, this is not our business.

Please, kindly discuss it with ICANN board whether they have or have not to publish that. But that doesn't prevent GAC to prepare initial comment on the Unified Access. We have prepared that and we sent it to the ICANN Board or ICANN President. That is our position, we forcefully, in a deterministic and decisive manner follow this situation. And we wanted that this should be respected. While we respect your views, we want that our views be fully respected by other parties. Thank you for coming here and thank you for sharing your views with us but please kindly understand our position. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Kavouss, and I just need to make it clear that it's not a board proposal, because we keep preferring to it as a Board proposal. I doubt it's a Board one. I saw one more hand but yeah, if you can keep it short because we need to stop here and pass the session to IPC, please. Thank you. -- please, here. Go ahead.

ANDREAS DLAMINI: Thank you. Mine is not necessarily related.

MANAL ISMAIL, GAC CHAIR: I am sorry, can you please, because -- is it eSwatini or --

ANDREAS DLAMINI: Yes. Andreas from eSwatini.

MANAL ISMAIL, GAC CHAIR: eSwatini.

ANDREAS DLAMINI: Used to be called Swaziland. Now is eSwatini.

MANAL ISMAIL, GAC CHAIR: Yes, yes, eSwatini. Please, go ahead.

ANDREAS DLAMINI: My question is not necessarily related to the presentations here, that we just heard, but it's generally on the GDPRs as to why are we taking them as if they were global regulations, for as they're just European regulations. And now, with that question comes to as to the percentage of registers and registries affected by these GDPR. So, as we look at all options in terms of the Unified Access Model, we might be risking fragmenting WHOIS. But perhaps it would be helpful to look at all options, look at how many -- what's the percentage of registries and registrars affected by these GDPR. What if the rest of the world would leave Europe with their GDPR and the rest of us continue with WHOIS system as it is? Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you, eSwatini. If there are any final remarks from your side, very briefly because we need to move on, please.

AMR ELSADR: Okay. I will try to start backwards, with the last question first. The reason why the GDPR is being considered across the board as an ICANN policy -- and by the way, there are views within the EPDP team that, you know, there should be distinctions made between the location of

registrants or the locations of contracted parties involved. These views are not shared by everyone on the EPDP team and there are many considerations to be taking in place there, including implementation costs that would be borne by contracted parties and then transferred on to domain name registrants.

But, generally, again, we are talking about processing activities. There are a number of processing activities that take place. A contracted party doesn't have to be located within the EU. It could be servicing EU citizens or residents. Even if the contracted party and the registrant are not located in the EU, if there are processing activities involved with third parties that take place in the EU, then again, these need to be GDPR complaint. So there's a big mesh or framework of actors involved in which GDPR compliance needs to be considered.

And again, from an implementation perspective, and this is something the GNSO always needs to take into consideration. It's in the PDP manual. Implementation considerations are a big deal because these cost time, and money, and a great deal of effort by the community members and businesses involved. So, sometimes a policy might seem like a good one, and we have seen this in a number of GNSO PDPs. But then, when it comes time to implementation, a lot of difficulties become apparent. In terms of, you know, the concerns raised for Universal Access or Standardized Access. You know, to me personally the label doesn't really matter.

Again, we are talking about processing activities that need to have specific purposes to comply with GDPR and they have to have legal

basis. Disclosure of data under GDPR has to have a legal basis and it has to be specific. Be extremely difficult from a legal perspective to have a Universal Access Model when you have different types of requests for different purposes.

So, every type of request for data disclosure, which is just another processing activity, has to have its own specific purpose grounded in a legal basis. You can't have one purpose or a few purposes with one or two legal basis covering every scenario in which disclosure of data can take place. This simply would not be GDPR complaint or it would leave both the data controllers and the processors subject to lawsuits and fines.

So these are some of the problems we're trying to tackle. And again, identifying what the data elements are and what the processing activities required are, do really need to come before the discussion on disclosure takes place, and that's why the charter has these gating questions involved. I hope that is helpful.

MANAL ISMAIL, GAC CHAIR: Thank you, Amr. I mean, I am sure this discussion will not end here. And we have IPC waiting. So, if you have a quick answer.

MILTON MUELLER: Will answer in two minutes.

MANAL ISMAIL, GAC CHAIR: Please.

MILTON MUELLER: Okay. So, I wanted to respond to Ashley's discussion. The Unified Access Model, I think the problem with floating this document now is that it's giving people a false impression and a false hope that they can have WHOIS the way it used to be and that we are just going to go through some procedures that allow everything to work the way it did if you get accredited and then suddenly you're going to be able to have indiscriminate access to all of the WHOIS data. And that's not going to happen. I can guarantee you of that. It's not going to be that way. There are going to be limits and we may not have a Unified Access Model. It may be impossible to achieve legally as Amr suggested. So, by floating this document, I think that either -- ICANN is either trying to pre-empt or is unconsciously misleading the community in terms of what direction we are going to go. Thank you, Manal.

MANAL ISMAIL, GAC CHAIR: Thank you, Milton, and thank you, everyone. We need to move on to the IPC part. I am very sorry Brian and Victoria to keep you waiting. I'll hand over directly to you for the sake of time. Please go ahead.

BRIAN WINTERFELDT: Good Morning. I'm Brian Winterfeldt, I am President of the Intellectual Property Constituency. I'm joined today by Intellectual Property Constituency Vice-President, Vicky Sheckler. A sincere thank you to our GAC colleagues and Manal, and (inaudible - 00:27:06) for generously allowing us some time in your very business schedule during ICANN63. To present you with an update about our thoughts and work on GDPR and the impact GDPR has had on WHOIS database.

Today we would like to help GAC members understand the true impact of GDPR on consumer protection, IP enforcement, antifraud and other security issues, all that are very important to Intellectual Property Constituency members. We would also like to give a brief overview of the IPC thoughts on the temporary specification. And our efforts within the EPDP focusing on reasonable access to non-public WHOIS data for legitimate purposes related to IP and consumer protection, and ultimately the need for Unified Access mechanism. I know our time is short and I want to allow time for questions at the end. So, we are going to dive into our presentation. I am going to turn it over to Vicky Sheckler, to give some introductory remarks.

VICKY SHECKLER:

Thank you. My name is Vicky Sheckler. At first, I'd like to comment on what you heard from Mr. Mueller. I found it quite remarkable, particularly given the letter that the Chairman of the Board sent to NCSG yesterday, trying to connect some inaccuracies that have been floated by the NCSG in connection with this EPDP, the GDPR, and the Uniform Access Model discussion. I encourage all of you to read that letter.

Now, in terms of the harms that we have seen since the changes in the structure to WHOIS data, we have seen a degradation in access to data for transparency and accountability purposes. Again, we are not thinking about access for indiscriminate reasons for data. We are looking at it for transparency, accountability, to investigate, for us in particular, trademark and copyright infringement claims.

And then, from a broader perspective to look at consumer harms. To look at the cyber security threats that are arising from this. I can tell you that, in our world we often see identity theft issues, [inaudible] issues, malware issues associated with IP infringement harms. The exchanges in access that we have experienced so far are making it much more difficult for us to investigate and try to correct these harms. Do you want me to stop there for the moment? Go ahead.

BRIAN WINTERFELDT:

Sure, I can continue. Thank you so much, Vicky. I want to start our substantive conversation by highlighting the most important issue for us, which we hope you also agree, is significant, which, listen to already some of the comments we have heard, I think are true, which is the harms that we are currently facing due to fragmentation of the WHOIS system. Consumer protection efforts, IP enforcement efforts, cyber security, anti-fraud, anti-counterfeiting, anti-piracy and other criminal investigations have all been hampered by redacted public WHOIS information coupled with desperate and disorganized access protocols.

Despite consumer protection, IP enforcement and security all being widely considered legitimate purposes for access to non-public WHOIS data in certain circumstances and with appropriate safeguards in place, we have seen a lot of difficulty in actually obtaining access to data necessary to serve these legitimate interests. Many IP owners are confused about how to request non-public WHOIS data. And those that don't participate ICANN are even more confused about whether they

can request data at all. The end result is that enforcement efforts that aim to address harmful and illegal behavior online have been significantly disrupted. Enforcement where possible takes longer and yields fewer satisfactory results, which is detrimental to internet users who rely on these enforcement efforts to create a safe and secure internet environment.

On October 12, ICANN received a communication from AppDetex, a leading brand protection company, which presented its results after sending thousands of queries for non-public data in furtherance of the legitimate purposes we previously discussed. The results were astounding. With only three percent of the requests yielding full WHOIS records. If a company like AppDetex, which is well versed in ICANN processes and procedures is having trouble, you can imagine how challenging it is for general community of intellectual property owners and consumer protection advocates.

AppDetex concluded the following, which I think is a great high level takeaway on this topic. One, redacted WHOIS contact data is largely unavailable for legitimate and legal purposes. Two, the majority of registrars do not respond for request for this data. Three, the small percentage of requests that are fulfilled are not completed in a reasonable time period. Four, there is no consistency of process for requested redacted WHOIS data. And five, the public interest is potentially at risk as a result of unavailability of WHOIS data. Vicky, I think it might be helpful if you could talk a little bit about your experiences with the Recording Industry Association of America with

regards to your enforcement efforts in this post-GDPR compliance world.

VICKY SHECKLER:

Thank you. So, my personal experience has been as follows, there has been some registrars that have put some information outside of Europe in the public WHOIS. There had been some that have put legal person information in the public WHOIS. Most have not. So, when we have gone to ask for non-public WHOIS data, I have had one registrar ask me to tell them that I would fit within the GDPR guidelines, no problem, I am happy to do that. And then they gave me the data. For that one it was all about legal persons in the EU. That was great. Thank you very much to that registrar.

I have had others that have told me that I need to get a subpoena to get the data, even though I have told them that I believe there has been an infringement that has occurred with respect to this site. I've explained the infringement to them, I'd given them evidence of infringement, and I've explained to them why we believe that the legitimate interest of us as a third party in accessing this data for investigation and enforcement purposes outweighs the interest of that registrant, if that registrant is a natural person, which we don't know at this point. I've had other registrars simply not respond what so ever. And we've reached out in multiple different ways to those registrars in case we had the wrong email address, and we've got no response. So this has definitely hampered our ability to enforce our members' rights.

BRIAN WINTERFELDT:

Thank you so much. I think that's a perfect example of one organization that is very sophisticated, dedicates resources, coming to ICANN meetings and participating and still facing challenges. So you can imagine the vast majority of people who are doing this consumer protection work who don't have the insight that someone like Vicky has. The challenges that they're going to be facing today. Many don't even know how to request access or where to even begin to look for it. And if you go to various websites of registrars, can be very difficult to even figure out where to even send a request, more or less than how to formulate one.

I know we do not have a lot of time with you here today and I thought it would be helpful if we give quick overview of the goals of the Intellectual Property Constituency as we work within the EPDP on the temporary specification for gTLD registration data, and as we work toward a Unified Access Mechanism. Which, as you can see, is necessary for us and for many stakeholders in the community. It should be noted that the goal of IPC is not and has never been to circumvent privacy protection. Rather the IPC's main goal is to appropriately balance privacy rights with legitimate interest in accessing certain registrant data which ultimately furthers the public interest.

Indeed, GDPR Recital 4 states, "The right to the protection of personal data is not an absolute right; it must be considered in relation to its function in society and be balanced against other fundamental rights in accordance with the principle of proportionality." The IPC submitted input to the EPDP which highlights our main priorities supported by legal memorandum from European lawyers with expertise in GDPR and IP issues. Including ensuring that ICANN does not over comply with the

GDPR. The importance of distinguishing between natural and legal persons, the importance of respecting the geographic scope of GDPR and employing a balancing test in relation to the redaction of certain fields such as registrant email which need not contain personally identifiable information.

The IPC is currently working to ensure that consumer and IP interests are represented in the discussion, and we understand that important progress is being made in the EPDP in this regard. The most important goal of the IPC of course is towards a unified access mechanism. To that end we have engaged in conversations with community members about how to create the legal foundation for Unified Access Model and have presented the previous work on an accreditation and access mechanism to ICANN org and the community for consideration.

As we've demonstrated, a consistently applied access protocol is of critical importance and we must develop one quickly to mitigate the harms that are being faced every day. We're willing to support any efforts to move toward a Unified Access Model and note that the GAC has been asked to support ICANN in determining how to implement a UAM. We welcome and encourage your thoughts on UAM during our discussions here today. And as Manal mentioned, we hope the discussions continue to go on. Vicky, do you have anything to add regarding UAM? Okay, great. I would like to at that point then open up the floor for questions, Manal, for whatever time we have left.

MANAL ISMAIL, GAC CHAIR: Okay, thank you. Any questions to Brian or Victoria? Yes, Iran please, go ahead.

KAVOUSS ARASTEH: Thank you sir, thank you madam for your presentation quite helpful, useful. Could I understand that more or less you are in favor of the position of GAC? If you can reply?

VICKY SHECKLER: We are absolutely in favor and aligned.

BRIAN WINTERFELDT: She said, yes, we are absolutely in line with the GAC. We've obviously been working closely with some of our GAC colleagues, we've been monitoring the communiques that come out after every meeting and we are very heartened by the efforts of the GAC to support the work towards the important work of going after bad actors on the internet.

KAVOUSS ARASTEH: Thank you very much.

BRIAN WINTERFELDT: You are welcome.

MANAL ISMAIL, GAC CHAIR: France, please. Go ahead.

FRANCE:

Thank you very much to our friends from the IPC to this good, interesting presentation. Thank you, Brian. And Vicky, you mentioned the issue of making a distinction between legal entities and natural persons. I think Vicky, you mentioned one registrar that you contacted actually had this distinction in place. As you know, actually it's subject to GAC advice. I think it was in San Juan we specifically asked the Board to put in place, to operationalize a distinction between legal entities and natural persons, because legal entities are not protected by GDPR which only applies to natural persons. I was wondering in your efforts that you are doing through the EPDP, do you think it's possible to put in place a distinction in the future WHOIS and where do you think this is going? Thank you.

VICKY SHECKLER:

From a policy and legal perspective, I think it's vital that we distinguish between natural and legal purposes. I think that that advances the goal of privacy protection in the appropriate manner also considering the issues of transparency and accountability online. As we've seen as people have progressed to moving business online, we're seeing more and more bad actors online.

We can't ignore the fact that we're seeing all kinds of dangers in this space. And we need to try to address it. In terms practically of the legal and natural person distinction, we are heartened by the fact that some ccTLDs are already making this distinction practically on a day to day basis. We hope that we'll see more of that happening as we move forward.

MANAL ISMAIL, GAC CHAIR: Thank you. Any other questions? Iran, please go ahead.

KAVOUSS ARASTEH: Madam, thank you very much again. But from a legal point of view, when you talk about the legal person, legal person is different from the natural, but if the legal person, legal entity, company designates someone to act on behalf, it's a mixture of natural and legal. It's not a simple issue. It's a quite different and complex issue, and we have to properly address that. Thank you.

BRIAN WINTERFELDT: Yes, so it can be complex to distinguish between a legal entity and a natural person. Legal entities are exempt from the privacy protections of GDPR, but there are ways around that. For example, rather than providing an email address that includes the individual's full name who's been designated to represent the company, you can use an email address that has some sort of generic term in it rather than a specific name. There are obstacles and hurdles that need to be addressed but they are not things that are impossible to deal with. But I agree it's not simplistic, but it's also not impossible to overcome the challenges and making the distinction.

MANAL ISMAIL, GAC CHAIR: Thank you, Brian. I can see another request from the floor. Benedict, if you can please introduce yourself.

BENEDICT ADDIS: Thanks, Manal. There were some statistics from the text early on. Sorry, my name is Benedict Addis. For this purpose, I'm speaking as myself. There's been some questions over the last couple of days about the methodology used by AppDetex. This is an organization that's sending large numbers of automated requests for WHOIS data to registrars and others. I think three percent was the number that was quoted on the number of responses they've had from registrars. Do you see that as a failing of the registrars or as a failing of the process? Thank you.

BRIAN WINTERFELDT: As far as the exact methodology that AppDetex uses, whether there's better ways to gather the data, I think the important point is the high-level takeaway about the challenges that are being confronted. Frankly, even if it was 25%, we're okay. That still means 75% of the requests are not being fulfilled. It's problematic. You have to think about the work that we're doing is only going after bad actors and trying to help keep the DNS clean. We're not obtaining the data for marketing purposes or for business purposes. It's really truly to protect the people in this room and your family and the people who use the internet from being defrauded.

When Vicky is reaching out to people to do enforcement efforts for the RRA, or when I'm reaching out on behalf of one of my clients, we truly are just going after people who are propagating phishing schemes and fraud schemes on the internet, and endangering consumers, and in

some cases stealing actually their personal data file information, robbing them of funds. So, the inability to access that information is problematic.

We mentioned also the temp spec does not make the distinction between legal and natural person. It's globally applicable; even though GDPR is not globally applicable, there are other ways that from our perspective it is overaly compliant. And then when you couple that with no uniform access solution, it puts us in a very challenging environment to do the work that we do.

BENEDICT ADDIS:

Can I follow up? Thank you very much for that, and I definitely understand your pain around the limited access. The problem and the reason I asked about methodology is that, as you may know, I run a registrar that deals with malicious domain names. I've received precisely one request from AppDetex on behalf of a client. In that request the only bit of unredacted information was the name of a law enforcement agency. If they've done any due diligence at all with such WHOIS as remains, they wouldn't have sent that request. So my concern is that we're talking a large number of automated requests , you're not sending out correctly formatted requests, and that may be the source of the problem. Thank you very much.

VICKY SHECKLER:

If I may; I can't speak to the AppDetex methodology, but I can speak to mine. And I am seeing the problems that AppDetex is seeing on an

individual one-by-one sending [inaudible] spaces haven't sent one to you, that I know of. So that may be the difference, I don't know. Manal, I think we've used all our time. Thank you so much.

MANAL ISMAIL, GAC CHAIR: I can see two more requests for the floor. If we can take one more minute. Okay. So, Milton and then yourself, thank you.

MILTON MUELLER: I think the facts about the AppDetexsituation need to be aired a bit more fully. There is a letter from one of the registrars that were sent 1200 requests from AppDetex. It turned that all of them were automated requests based on some kind of AI reading of the domain and it might have looked like a trademark violation but most of them were not. And the registrar responded to AppDetex and said, "Can you please give us more information?" And AppDetex did not respond for over three months and then they ran around complaining that nobody had responded to their request. So I think this is kind of a staged thing intended to make the registrar look bad when in fact it doesn't really indicate that much of a problem.

MANAL ISMAIL, GAC CHAIR: Can we take the rest of the questions just for the sake of time? Please introduce yourself. Keep it brief, please.

ELLIOT NOSS:

Will do. Elliot Noss from Tucows. We were actually the drafters of the letter that Milton refers to, it's now in the ICANN correspondence record. I'd really like to say two things.

First, you know, Brian and Vicky, you chose to use in your time here the AppDetex data to prove the point. I think it's then difficult to say, "Hey, we don't know about AppDetex." You chose it to make the point here.

The second point I want to make is the more important point. This should be a situation that is not shame and blame. This should be a situation where we are working together while the EPDP is ongoing to deal with the elements that the two of you raise. Like standardizing requests. Like working with -- we know there are some bad actor registrars. Working with us together to try and go and deal with, to ICANN compliance, those who are not dealing with things as they should.

Again, I just I wanted to cry this win/lose attitude, zero-sum attitude that is just right throughout, particularly the AppDetex letter. It feels like political theatre. And again, I want to put my hand up and say -- Vicky, I believe we've dealt with your requests in a reasonable fashion, and if there's improvement to be done there, we're happy to do it. But we have to be working together on this. And I'd really, really encourage you guys to change your tone because that's how we're going to productively work together to solve these problems which are very thorny. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you. Please, very briefly.

BRIAN BECKHAM: Thank you, chair. Brian Beckham from the World Intellectual Property Organization. I will actually yield my time on the question, but I wanted to just react to say publicly that we would be very happy to take up the last speaker, Elliot Noss from Tu cows on this idea of working collaboratively to unblock the log jam that's in front of us on this unified access model question. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you. US.

ASHLEY HEINEMAN: Just a note also in response to what Elliot said. Those of us on the EPDP are working on those issues. In fact, [inaudible] we've met as a small group to talk about under the context of reasonable access understanding better what information is required, what kind of timeline there is to get a response, so we can kind of save ourselves these headaches that you're talking about. So the conversations are happening and I hope they'll continue to progress in the EPDP and won't be met with a lot of what we've experienced today, which is a lot of discussions that aren't as always helpful, but we ultimately get there, I just hope it doesn't take as long. Thanks.

MANAL ISMAIL, GAC CHAIR: Thank you, Ashley. Brian and Vicky, any final remarks from your side?

VICKY SHECKLER: Thank you, and thank you, Elliot and Ashley. The important takeaway is the collection of this data is in part for access to deal with legitimate concerns that are happening online. I very much welcome the opportunity to work with all of you to find a reasonable approach moving forward. I agree with you, Elliot; we have to get past the rhetoric and start doing the work. Thank you so much.

MANAL ISMAIL, GAC CHAIR: Okay. Thank you everyone, apologies for my lousy chairing today; late start and late ending, and sorry to take ten minutes out of your lunch break. It's lunch break now, but we need to be back in the room for GAC colleagues at 1:30 please for the BGRI working group. Thank you, everyone.

(Lunch)