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THE CONSULTATIVE COMMITTEE OF THE CONVENTION FOR THE PROTECTION OF INDIVIDUALS WITH REGARD TO AUTOMATIC PROCESSING OF PERSONAL DATA [ETS No. 108]

LE COMITE CONSULTATIF DE LA CONVENTION POUR LA PROTECTION DES PERSONNES A L'EGARD DU TRAITEMENT AUTOMATISE DES DONNES A CARACTERE PERSONNEL [STE n°108]

(T-PD)

Compilation of reports of T-PD representatives in other committees and *fora* as well as other events and conferences

Compilation des rapports des représentants du T-PD aux travaux d'autres comités et *fora* ainsi qu'à des événements et conférences

Directorate General of Human Rights and Rule of Law /

Direction Générale Droits de l'Homme et Etat de droit

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I.   State of Play

In accordance with the Declaration of the Committee of Ministers on ICANN, human rights and the rule of law adopted by the Committee of Ministers on 3rd June 2015 (Declaration)[1], an expert has participated as a representative of the Consultative Committee of Convention 108 (TP-D) at ICANN's 54th International Public Meetings (Conference) from 18-22th October 2015, in Dublin. As stated in Point 9 of the Declaration during the Conference the expert was tasked to seek to *explore ways to assist the GAC, ICANN and its communities in making arrangements to ensure that human rights and rule of law, as well as the Resolution on human rights and transnational corporations and other business enterprises, adopted by the United Nations in June 2011, are referred to and considered by ICANN with regard to its policies and procedures.*

The 5 days conference was attended by participants from more than 65 countries and from at least 6 Intergovernmental Organisations and had a busy schedule in workshops, open forums, and working meetings on the development and implementation of Internet policies. The TP-D expert has attended 15 working groups, a couple of workshops, and had an important number of bilateral and ad-hoc working meetings. The attendance of TP-D expert to the conference was assisted by Lee Hibbard, the Council of Europe's representative to the Governmental Advisory Committee (GAC) who facilitated many formal and informal meetings with relevant stakeholders' representatives.

1.   ICANN[2]

The Internet Corporation for Assigned Names and Numbers (ICANN) is a non-profit organization that is responsible for coordinating the maintenance and methodologies of several databases, with unique identifiers, related to the namespaces of the Internet - and thereby, ensuring the network's stable and secure operation. It promotes competition and develops policy on the Domain Name System (DNS), which govern the Internet's unique identifiers (names and numbers). Through its coordination role of the Internet's naming system, it does have an important impact on the expansion and evolution of the Internet.

 ICANN follows a multi-stakeholder model in which individuals, non-commercial stakeholder groups, industry, and governments play important roles in its community-based, consensus-driven, policy-making approach. Three **Supporting Organizations** develop and recommend policies concerning the Internet's technical management within their areas of expertise. They are the *Address Supporting Organization (ASO)*, the *Country Code Names Supporting Organization (ccNSO)* and the *Generic Names Supporting Organization (GNSO)*. Four **Advisory Committees** serve as formal advisory bodies to the ICANN Board. They are made up of representatives from the Internet community to advise on a particular issue or policy area and include: *At-Large Advisory Committee ("At-Large"or ALAC)*, *DNS Root Server System Advisory Committee* (RSSAC), *Governmental Advisory Committee* (GAC), and *Security and Stability Advisory Committee* (SSAC). The ICANN **Board of Directors** (BC) has the ultimate authority to approve or reject policy recommendations, while the **Nominating Committee** (NomCom) and **Ombudsman** assure inclusive representation and investigate procedural complaints respectively.

At the heart of ICANN's policy-making is what is called a "multistakeholder model". This is a community-based consensus-driven approach to policy-making. The idea is that Internet governance should mimic the structure of the Internet itself- borderless and open to all. ICANN's inclusive approach treats the public sector, the private sector, and technical experts as peers. In the ICANN community, you'll find registries, registrars, Internet Service Providers, intellectual property advocates, commercial and business interests, non-commercial and non-profit interests, representation from more than 100 governments, and a global array of individual Internet users. All points of view receive consideration on their own merits. ICANN's fundamental belief is that all users of the Internet deserve a say in how it is run.

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[1] https://wcd.coe.int/ViewDoc.jsp?Ref=Decl%2803.06.2015%292

[2] source: www.icann.org

ICANN plays a unique role in the infrastructure of the internet. Through its contracts with registries (such as dot-com or dot-info) and registrars (companies that sell domain names to individuals and organisations), it helps define how the domain name system functions and expands. It is widely recognised that despite the fact ICANN, in theory does not control the content of the internet it has an important impact on the internet's overall expansion and development and has considerable influence, as lately proven on a wide range of Human Rights as well.

2. ICANN and Human Rights

It was in October 2014 that a Report[3] by Dr. Monika Zalnieriute and Thomas Schneider (Report), facilitated by the Council of Europe was issued in which the topic of the influence of ICANN's activity and impact in the area of Human Rights was first put forward. The Report demonstrated that ICANN's policies' contained controversial elements from the perspective of Human Rights protection. In the Report the authors analysed ICANN's New Generic Top Level Domains' policy, WHOIS and Registrar Accreditation agreements (RAA) and found that these policies and instruments have negative effects on the right to freedom of expression, freedom of association, freedom of religion and principle of non-discrimination, privacy and data protection. Following these statements and by taking into consideration the recommendations of the Report, stakeholders decided to set up three working group and tasked to find solutions to the issues raised by the Report: **Cross-Community Working Party on Human Rights** (CCWP-HR), **Cross-Community Working Party on Accountability** (WP4) and **GAC Working Group on Human Rights and International Law**. Based on Article 4 of ICANN's Articles of Incorporation: *" ICANN is bound to operate "for the benefit of the internet community as a whole, carrying out its activities in conformity with relevant principles of international law and applicable international conventions and local law"*, the **CCWP-HR** was tasked to raise awareness, map policies, procedures and operations that impact human rights, provide information, suggestions and recommendations to chartering organisations and the ICANN community, propose procedures and mechanisms for HR impact assessment, develop and explore CSR guidelines that are in place or should be created, produce position papers and statements where appropriate. The **CCWP on Accountability** was created to deliver proposals that would enhance ICANN's accountability towards all stakeholders mostly in connection with ICANN accountability that must be in place or committed to within the time frame of the IANA Stewardship Transition; as well as addressing accountability topics for which a timeline for developing solutions and full implementation may extend beyond the IANA Stewardship Transition. CCWP on Accountability has as WP4 a body which is tasked to integrate human rights considerations into ICANN's bylaws. The **GAC Working Group on Human Rights and International Law** is an advisory working group of the GAC, where the representatives of the governments will discuss human rights related issues.

From 2014 these three working parties dealt with the issue of how to address globally and horizontally human rights in ICANN's context. It is important to mention that other working parties related to specific SOs and ACs have also been dealing with issues which can have human rights implications but those are related to ICANN's specific policies and/or activities.

For this conference the CCWP-HR prepared a **paper**[4] (Paper) for presentation and discussion which intended to build on and complement the previous reports published by the Council of Europe and ARTICLE 19 on ICANN's responsibility to respect Human Rights. The 30 page Report introduced the UN Guiding Principles on Business and Human Rights into the ICANN context, took preliminary stock of Human Rights which are or can be affected by ICANN policies and activities, highlighted the importance of a Human Rights Impact Assessment (HRIA) in an organisation such as ICANN and explained in detail about Corporate Social Responsibility (CSR) and transparency reporting.

The Report made 6 important recommendations: As a first step, ICANN should undertake a **review of Human Rights** impacts in the policy development process. ICANN should focus on the **core rights, which are freedom of expression and privacy** (!), while keeping in mind other applicable rights from international human rights conventions. ICANN should develop **a Human Rights report**, initially based on the results of the review process. Before reporting, ICANN should take stock of available data, including an

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https://www.coe.int/t/informationsociety/Source/DGI_2014_12E%20Report%20ICANN%20and%20Human%20Rights%20updated%208%20Oct%202014.pdf

4 ICANN's Corporate Responsability to respect Human Rights: Recommendations for developing Human Rights Review Process and Reporting

analysis of which elements from the annual report would be relevant to include in a Human Rights report, and any other of ICANN's activities that touches on Human Rights such as the reform of WHOIS, the global public directory of all domain name registrants . This stock-taking will highlight gaps in data collection that ICANN can work towards improving. ICANN should develop an approach towards **Transparency Reports** detailing law enforcement requests. In the longer term, ICANN should consider an organisation-wide **Human Rights Policy**, based on a comprehensive HRIA, as well as **CSR strategy** that could lead to a full **CSR reporting**.

3. ICANN and privacy and data protection

As we can see, even if Human Rights related considerations entered relatively late and slowly in ICANN policy making processes, the rights to privacy and to protection of personal data, as well as the important right of freedom of expression have been from the beginning considered as the most relevant ones. These rights have been in contention from the inception of ICANN, although it is obvious to those familiar with data protection law that ICANN can be considered as a global data controller operating a network of data processors (if not data controllers as well) processing a huge amount of personal data. ICANN insists that most of it be publicly available, and they have an extended and an established relation with law enforcement agencies. It is clear that the right to privacy and to protection of personal data in ICANN's policies and actual activities will remain in the future one of the most important Human Rights, and one where there is always considerable controversy and disagreement.

However the issue of ICANN and privacy and data protection is not so new. We can find easily the opinions and official communications of WG29[5] and the International Working Group on Telecommunications[6] in which they raise their concerns on issues pertaining to the questions of purpose limitation, data minimization, and access to data, proportionality, data accuracy and use of data for other than the original purpose mainly from a European/EU perspective. The EDPS has also written to ICANN to inform them that their data retention requirements also violate the European Charter of Fundamental Rights, as interpreted in the recent ECJ decision which threw out the data retention directive. While the opinions and communications are extremely relevant, they focus on broader issues without entering into technical details. Importantly, they offer an analysis of what ICANN needs to do to comply with a European concept of privacy and data protection.

There had been decided improvement at ICANN on the perception of privacy and data protection issue, assisted greatly by the Report which the Council of Europe facilitated. This has led to the progress described above (creation of specific, horizontal working groups, publishing of the paper for ICANN 54, mobilization of communities, involvement of external experts). Now, we are making progress in stressing a more global approach to the privacy and data protection issues, and enunciating the clear need to frame those issues in a broader Human Rights Policy and CSR strategy. We have to take into account at this point that while some constituencies are more sensitive to privacy and data protection issues, others remain focused on businesses and law enforcement considerations. If we hope to make progress in implementing human rights, it does require representation in a wide range of working groups where even technical issues can be decided in ways that mitigate against the exercise of freedom of expression and the protection of personal information. Stakeholders who are fighting for human rights have therefore stressed that it is important to take stock of all working parties to determine which ones may implicate, directly or indirectly, privacy and data protection issues and to identify the policy areas where privacy and data protection are explicitly at stake.

a. **Horizontal WPs**:

   i. CCWP-HR (HR policy, CSR strategy)
   ii. WP 4 of CCWP on Accountability (IANA transition related HR issues)

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[5] http://ec.europa.eu/justice/data-protection/article-29/documentation/opinion-recommendation/files/2003/wp76_en.pdf , 4 letters to ICANN

[6] In 2000 the IWGDPT issued a common position on WHOIS data, In 2000 the IWGPT issued a ten commandments for protecting privacy on the Internet, In 2003 IWGPT wrote to ICANN with concerns about the Interim Report Of The Names Council's WHOIS Task Force Of October 14, 2002, In 2005 IWGDPT wrote to the International Working Group on (IWGIG) to let them know that the two groups exist and are interested in Internet privacy issues and further cooperation

   iii. GAC Working Group on Human Rights and International Law (advisory body to GAC on HR)
   iv. Public Safety (LEA access)

  b. **Communities' WPs**:

   i. Non Commercial Stakeholders Group (NCSG) (Privacy and HR at ICANN)

  c. **ICANN's policies** where privacy and data protection issues are at stake:

   i. New Generic Top Level Domains' policy
   ii. All WPs and implementation groups related to the new RDDS (WHOIS renewal)
   iii. Privacy and Proxy Services Accreditation Issues PDP, and the implementation WP which will follow
   iv. All WPs and implementation groups related to the 2013 Registrars Accreditation Agreement
   v. WHOIS Conflicts with law policy and implementation issues
   vi. Thick WHOIS policy and implementation
   vii. Public Safety policy and advice to the GAC
   viii. Discussion of the definition of "public interest", due to take place in 2016
   ix. Review committee addressing consumer protection and competition issues, due to commence in 2016

II. Outline of activity

  Civil society appears to be making considerable headway in achieving recognition for privacy and human rights, assisted in no small part by the interventions of the Council of Europe. We have identified the main issues and fora for privacy and data protection discussion, and thus it seems highly desirable, in line with the Declaration to draw up an outline of activity of the possible involvement of the TP-D in ICANN's work. It is even more desirable as privacy and data protection expertise would surely be needed in the future work of these working parties, and the leverage of the expertise related to the implementation of the Convention 108 would be highly beneficial for the overall organisation of ICANN as well. We can divide the outline of the TP-D possible activities in short, medium and long term.

1. Short term

   i. TP-D would be requested to mandate an expert for participating in discussions in working groups taking place between the ICANN meetings and bring forward privacy and data protection considerations about the topics discussed and to have new proposals, suggestions.
   ii. TP-D should send an official letter to working groups of interest[7] that it wishes to join

2. Medium term

   i. At least one expert from TP-D should actively participate at ICANNs meetings at least for the next two years
   ii. The expert should attend working groups and should contribute to the outcome in a way that they are in line with the provisions and the spirit of Convention 108

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[7] At the meeting of the CCWP-HR the TP-D expert has offered the TP-D's contribution, subject to approval of the group, concerning the topic of work stream to existing accountability structures and to input to new PdPs especially to the new gTLEs and on WHOIS. Mailing lists will be created for these topics where the designated expert could join the discussion and contribute to the work.

iii. The expert should prepare drafts, presentations, reports on already discussed topics and should suggest new topics to be discussed with a view to raising the level of protection of privacy and personal data, and the level of awareness of these issues in this important multi-stakeholder community.

iv. The expert should provide expert comments during the consultation of key documents, which happens on an ongoing basis at ICANN.

3. Long term

i. The TP-D should actively contribute to setting up of an organisation-wide Human Rights Policy and a CSR strategy and reporting mechanism with special focus on privacy and protection of personal data.

ii. The TP-D should actively contribute to policy areas mentioned under Point 3.c.

iii. The TP-D could organise common events (conference, seminars, workshops) in order to raise awareness in Member States on privacy and data protection issues related to ICANN.

iv. The TP-D should issue reports, and facilitate recommendations on the protection of privacy and data protection in ICANN.

v. TP-D should contribute to efforts to mandate a transparency report (with special attention on LEA access and due process) and a related reporting mechanism and metrics.

III. Conclusion

The participation of the expert from TP-D was welcomed as very timely by many participants, as privacy and data protection issues are just getting slowly into the centre of conversations and debates. In spite of the fact that ICANN is a rather complex organisation where different interest groups are working together, issues pertaining to privacy and data protection have to be identified and the Council of Europe's voice has to be channelled properly as there is absolutely a need for official corroboration of the efforts of civil society and other stakeholders who are trying to introduce human rights. ICANN may be reaching a turning point which could be observed at the Conference as a considerable number of constituencies wish a change in the way ICANN functions, making the organisation a modern responsible global organisation which respects Human Rights. In achieving this, expertise that TP-D brings could be extremely valuable, building already on the good cooperation of Council of Europe and some of the ICANN's constituencies and thanks to the uniqueness of the expertise the TP-D can provide. The volunteering of the TP-D to join the discussions on privacy and data protection issues and deliver expertise in specific matters was truly welcomed by all constituencies, working parties, bodies and participants.

Internet governance has become an extremely important global issue, and not just with respect to the IANA transfer, where the US appears to be releasing its guardian role for the numbering system. In conclusion, there is a window of opportunity opening right now that appears to be a promising and timely occasion for TP-D to get involved in a global and influential organisation's policy making procedures and to assist to the incorporation of the Council of Europe's core rights and values in the everyday functioning of this organisation. We have an opportunity to reinforce the protection of privacy and of personal data as reflected in ICANN's key future policies and activities which in the end can contribute to a more open, free and responsible internet world-wide.

by Peter Kimpián

Report of Péter Kimpián on participating in the CODEXTER Drafting Group on Special Investigation Techniques, Rome, 18 February 2016

The TP-D Bureau was invited during its last meeting 9th –11th December 2015 by the Committee of Experts on Terrorism (CODEXTER) to nominate an expert to take part in the work of the Drafting Group on Special Investigation Techniques (SIT Drafting Group). In response to the invitation an expert of the TP-D Bureau participated in the first meeting of the SIT Drafting Group which was held in Rome on 18 February 2016.

The meeting had the aim to prepare a draft document which would bring the necessary update to the Council of Europe Recommendation 2005(10) on special investigation techniques in relation to serious crimes, including acts of terrorism (SIT Recommendation) with view to the development of technological capabilities and the desire to integrate in the text a strengthened reference to the protection of human rights and respect of rule of law.

The meeting was attended by representatives of the CODEXTER, CDPC, CDMSI, T-CY, T-PD, MONEYVAL and the representatives of the CoE Secretariat. The group agreed on discussing the main body of the SIT Recommendations first and to deal with the Preamble at its next meeting. Based on the draft document prepared by the CoE Secretariat and further substantiated by the Chair of the Group and other external expert the SIT Drafting Group discussed the proposed text in detail, paragraph by paragraph. A day before the meeting the TP-D expert also submitted its suggestions to the text but due to the late arrival of the document and some technical reasons the member of the SIT Drafting Group could not receive it. However the TP-D expert was given the opportunity to present its suggestions in oral during the meeting and the document he had prepared was circulated among the member of the SIT Drafting Group after the meeting.

The main issues the TP-D expert commented on were pertaining to the definition of the scope of the recommendation, to the adequate integration of the principles of the necessity, proportionality and purpose bound data processing as declared by the Convention 108 and to a more active integration of the data protection authorities in the assessment of the legality of the use of the special investigation techniques. The document containing the suggestions of the TP-D expert is attached to this Report.

The next meeting of the SIT Drafting Group will be organized in June 2016.

by Peter Kimpián

**Report of Péter Kimpián on participating on participating in the 55th ICANN meeting
in Marrakesh from 4-10th March 2016**

State of play

Following the outline of proposed actions that the TP-D Bureau approved at its meeting in December 2015, I participated on behalf of the TP-D in the 55th ICANN meeting which took place in Marrakesh from 4th – 10th March 2016, together with Sophie Kwasny of the Secretariat. Our participation demonstrated, in line with the Declaration of the Committee of Ministers on ICANN, human rights and the rule of law (Adopted by the Committee of Ministers on 3 June 2015 at the 1229th meeting of the Ministers' Deputies), the continued interest of the TP-D to take part in the policy making process of ICANN, to assist its constituencies and to deliver its expertise in order to have the right to privacy and to personal data protection incorporated the best possible ways in ICANN's policies and procedures. This participation also confirmed the importance of providing such an expertise to the ICANN constituencies, and the topicality of this work.

The most important development during the 55th Marrakesh meeting was the agreement reached on 10th March on the proposal for Internet Assigned Numbers Authority (IANA) Transition, which will, if approved, make ICANN become the next manager of the IANA. The transition is the final step in the long-anticipated privatisation of the Internet's Domain Name System (DNS) first outlined when ICANN was incorporated in 1998. The agreement on the proposal put an end to an extensive work which included all the stakeholders and constituencies of ICANN as part of the work carried out in the so called Work Stream 1. The IANA is a set of registries for domain names, IP addresses and protocol parameters essential for the functioning of the global internet which are to be transferred from the U.S. Government's stewardship. It also proposes ways to enhance ICANN's accountability as a fully independent organisation. The proposal after the formal adoption has been sent to the US National Telecommunications and Information Administration (NTIA) for consideration, but ICANN constituencies are confident that the proposal transmitted to the NTIA meets all the criteria set out originally for the transition, including stability of the system and multi-stakeholder nature that would not allow one government or an inter-governmental process to step in and hope that the Transition process can start soon.

Following the submission of the report on accountability recommendations under Work Stream 1 being part of the proposal to the US Government on 10 March, the ICANN community is set to continue work on enhancing ICANN's accountability, by starting to look into modalities for implementing the initial recommendations, as well as into an additional set of recommendations on issues such as: accountability of ICANN staff, accountability of ICANN constituencies, and jurisdictional aspects. This will be followed by the development of a Work Stream 2 report. Work Stream 2 items are listed in Annex 12 of the CCWG-Accountability report , as follows:

- Considering improvements to ICANN's standards for diversity
- Focused efforts to enhance ICANN's transparency
- Improving and clarifying expectations of ICANN staff accountability
- Enhancing the accountability of ICANN's Supporting Organizations and Advisory Committees
- Addressing jurisdiction-related questions, focused on applicable law for contracts and dispute settlements
- Developing a Framework of Interpretation for ICANN's Human Rights commitment and proposed draft Bylaw (more information in Annex 6 of the Work Stream 1 Report)
- Considering enhancements to the Ombudsman's role and function

With respect to the ICANN's Human Rights commitment, the ICANN Board made the following comment on 6th February 2016: "*Within its Core Values, ICANN will commit to respect internationally recognized Human Rights as required by applicable law. This provision does not create any additional obligation for ICANN to respond to or consider any complaint, request, or demand seeking the enforcement of human rights by ICANN. This Bylaw provision will not enter into force until (1) a Framework of Interpretation for Human Rights (FOI-HR) is developed by the CCWG-Accountability (or another Cross Community Working Group chartered for such purpose by one or more Supporting Organizations or Advisory Committees) as a*

consensus recommendation in Work Stream 2 (including Chartering Organizations' approval) and (2) the FOI-HR is approved by the ICANN Board using the same process and criteria it has committed to use to consider the Work Stream 1 recommendations."

It follows from the above that ICANN has reached a turning point where the formulation of its bylaws governing its new functions and redefining its old ones is open to Human Rights related considerations. As it can be deducted from the comment of the Board, for the time being they are supposed to follow legal requirements of states where ICANN or its associated partners are operating, making business. Many start claiming that ICANN should ensure a minimum level of the protection of Human Rights including rights to privacy and to the protection of personal data for the entirety of its operations irrespective of the geographical scope of its operation. For this, there is a clear need of involvement of some constituencies and a headway to be associated to civil society. In order to have this approach widely acknowledged with the business, law enforcement, etc. communities and at the end have it accepted by all, a more focused and concentrated effort would be needed. The Council of Europe's assistance is seen by many as an important step towards this direction.

After the Dublin meeting (18-22 October 2015) and during the present meeting several achievements have been reached as well as several target areas have been identified where a more active involvement will be desirable from the part of TP-D.

Achievements:

One expert from TP-D has subscribed to two working groups (GNSO RDS PDP WG and CCWG HR) and took active part in the working groups' work. As the GNSO RDS PDP WG has just been set up after the Dublin meeting with the aim of renewing the domain name registration system until the Marrakesh meeting, only some practical and functional work was carried out which consisted mainly of electing the leaders of the WG and defining the working methods and the order of topic to be debated. However after the Marrakesh meeting the subgroup started to debate on the purpose and the data sets to be associated with the new Registration Directory Service (RDS), where the expert from TP-D could add some input in order to support an approach where the purpose of the RDS is defined first and then the data sets are rendered to the subsequent purposes afterwards.

As for the CCWG HR it has been agreed during the Marrakesh meeting that the TP-D expert will provide input in the shaping of the Human Rights Impact Assessment to be prepared by the WG and which could notably be based on experience gained and good practices analysed in relation to Privacy Impact Assessments in Europe and beyond.

The two CoE representatives made a joint presentation during "Privacy at ICANN" panel which was attended by 30-40 persons coming from different constituencies. In our presentation we emphasised the importance of the rights and freedoms as enshrined by various Conventions of the Council of Europe and more specifically by Convention 108 and elaborated on practical ways and modalities on how to implement them in the ICANN environment. We gave an outlook of the future involvement of the TP-D in ICANN policy making processes.

We have informally met the main stakeholders supporting a broader recognition of the rights to privacy and to the protection of personal data in the ICANN environment and agreed with them to coordinate and share information on a regular basis.

With those stakeholders it has been also agreed that in one of the forthcoming meetings of ICANN (57 or 58?) a "Privacy Day" would be organised where Data Protection and Privacy Commissioners from the signatory states to Convention 108 will be invited to speak and to address privacy and data protection issues and concerns. Such a high level event could give a new impetus into the debate on the level of human rights protection within ICANN.

More active involvement is needed:

As a call for volunteers has just been released to contribute to 'work stream 2' (https://www.icann.org/news/announcement-2016-03-25-en) it seems to be of imminent importance that an expert from the TP-D joins this WG as the issues related to the development of a Framework of Interpretation for ICANN's Human Rights commitment as explained above would be highly relevant from the protection to privacy and personal data point too.

It is of high importance to ensure an active involvement of an expert in the WG where TP-D is already a member: GNSO RDS PDP WG and CCWG HR.

It seems to be paramount to start negotiations, exchange of views with the registrars' stakeholders group as it seems that they seek a way for elaborating a standardised form for access request to the personal data processed by their members. The TP-D expertise in the matter could be seen as valuable especially with regard to access by law enforcement authorities to private data.

It is essential to start an exchange of views with the law enforcement community preferably commencing with the European (Europol), or Europe-based (Interpol) ones in order to shape preferably a common privacy friendly position to be represented in Public Interest WG and for GAC Public Safety WG. For this it would be preferable to invite them to the TP-D plenary meeting or to one of the TP-D Bureau meetings.

The TP-D should initiate a dissemination of its position towards privacy and data protection issues between GAC members reiterating the importance of the "adequate/appropriate level of protection" in ICANN policies and procedures. In this endeavour, European members of the GAC could be our first partners as they have already made a strong commitment to those rights and values. We should attend in the future the GAC WG on Human rights And International Law and support GAC members in shaping their positions towards the issues discussed, especially concerning: new GTLD application round, IANA transition and the implementation of the UN Guiding principles on human rights and transnational corporations and other business enterprises and deliver our expertise when needed.

The TP-D has to continue to explore how it can best contribute to the policy development in areas which were identified as of interest after ICANN 54 (Dublin meeting):

x. New Generic Top Level Domains' policy
xi. All WPs and implementation groups related to the new RDDS (WHOIS renewal)
xii. Privacy and Proxy Services Accreditation Issues PDP, and the implementation WP which will follow
xiii. All WPs and implementation groups related to the 2013 Registrars Accreditation Agreement
xiv. WHOIS Conflicts with law policy and implementation issues
xv. Thick WHOIS policy and implementation
xvi. Public Safety policy and advice to the GAC
xvii. Discussion of the definition of "public interest", due to take place in 2016
xviii. Review committee addressing consumer protection and competition issues, due to commence in 2016

by Peter Kimpián

Report of Péter Kimpián on participating in EURODIG (Brussels, 9-10 June 2016)

In line with the commitment of the TP-D to contribute actively to the implementation of the Council of Europe's principles and standards on the protection of privacy and personal data in the dialogue on internet governance I participated on behalf of the TP-D Bureau in the EURODIG meeting which took place in Brussels 9-10 June 2016, together with Sophie Kwasny of the Secretariat. Our participation was welcomed as lot of questions directly or indirectly pertaining to the protection of privacy and of personal data was debated and the point of view of the Committee was deemed straightforward and enlightening.

Following the prolongation by 10 years of the mandate of the Internet Government Forum (IGF, global forum on internet governance under the direction of UN secretary General) the EURODIG set itself as primary aim to feed in the IGF debate with the European position on internet governance. It has emerged that the emphasis of the multi stakeholder and bottom-up approach model as the preferred model for internet governance lies in the heart of the European position together with the need for an enhanced internet security, accountability, privacy, reliability, openness and safety. The conference was also attended among others by Secretary General Thorbjørn Jagland, Commissioners Andrus Ansip and Günther Oettinger and Assistant EDPS Wojciech Wiewiórowski.

Internet of Things

As a pre-event to Eurodig on 8th June 2016 the meeting of the Dynamic Coalition on Internet of Things (IoT) was held. The issues related to the IoT raised during the meeting were numerous and throughout the meeting the multi stakeholder approach has been emphasised. One of the issues discussed by the participants was the danger of pollution that the IoT can represent in 2 ways: pollution of spectrum and waste pollution. A lot has been said about ethical considerations related to the use of IoT as well as the need for an enhanced transparency and accountability. In this respect it was agreed that the protection of human rights and more precisely the right to the protection of privacy and to personal data should figure high on the agenda. Issues about backdoors in particular and access to data by law enforcement in general have been also touched upon. Need for clear rules and uniform procedures was demonstrated. The participants all agreed that from a technical point of view the elaboration of cross sector standards for the IoT could be highly needed as often they are designed for a global use. The importance of raising awareness for consumers and for producers has been also spelled out such as the need for a higher protection for vulnerable users such as children. It has been emphasised by our side that the privacy by design approach and the use of privacy impact assessment can help to build trust in the IoT products and applications.

The organisers welcomed our participation and our suggestions made during the meeting and invited the T-PD to take part in the executive committee of the Dynamic Coalition on Internet of Things.

On the first day of Eurodig, an IoT panel also took place. During the panel it was reiterated that privacy considerations should not stop the spreading of this technology, but privacy and data protection should be built in part of the products. The building of trust seems to be one of main concern for many and that, for this, there are already some promising initiatives: Alliance for Internet of Things, European Commission's privacy engineering program. However it emerged that big data analytics' related fears seem to be even higher that those related to "simple" data protection fallacies as the panellist underlined that with this new method a common loss of privacy can be witnessed. It has been agreed that data protection regimes are not enough for new technologies such as IoT and Big Data analytics and that ethical, societal and economic considerations are also to be taken into account. The proposed solution by the panel was an extended focus on privacy, security, net neutrality and liability issues as well as on instruments which can lead to a much greater transparency and a more inclusive approach.

At the end of the panel I presented some privacy and data protection considerations from the audience among the issue of control over personal data, asymmetric information flow, lack of awareness, the fact of the un-transparent collection of large quantities of data, concerns about informed consent, poor data security measures, the high degree of fragmentation between market players, the processing of personal data for different purpose and the fear raising about profiling and analysis of behavioural patterns.

User trust on trans-border data flows

It was highlighted that even if there is a consensus at global level on the multi-stakeholder model for internet governance there is no transparency or inclusive approach regarding security issues. Governments all around the world tend to solve, tackle the issues related to security in closed meetings. Thus, it was clearly emphasised that there is an imminent need for a multi-stakeholder and a multi-jurisdictional model when tackling internet related security issues. For this a new form, namely "collaborative security" was proposed where all relevant stakeholders could get an opportunity to speak out and to have a role in the solution. It was further emphasized that security and privacy does not need to be balanced but solutions – using the model of "collaborative security" – has to be found in whose privacy and security are equally present as results.

It was also put forward that 76% of the profit stemming from the digital world are realised by offline companies. Therefore the inclusion of all stakeholders being online or offline is one of the most important issue as the second one is that all relevant partners assume their own respective responsibility in making the internet safe and secure.

One participant argued that most of the internet users don't know what is going to happen with their personal data once online and that privacy for many became a privilege and as many will never know any of the privacy issues or considerations because of language and educational deficiencies and differences among internet users across the globe.

As a solution the implementation of the model of collaborative security, the inclusion of all stakeholders who respectively assume their own responsibility as well as the building of trust among stakeholders was suggested.

Security vs Privacy

It was underlined by this panel too that the involvement of the citizens in the debate is key. If there is no involvement in the legislative process citizens should go to challenge the legislation before constitutional or international courts one panellist argued. In this process ECtHR plays already, and can further play, an essential role. Questions about law enforcement access, more generally government access to citizens' data were also raised and it was pointed out that it remains unknown to what extent those data processing are effective, what are the real benefits of the data collection programs.

It was underlined as major deficit that there is no involvement of citizens or other stakeholders or any public consultation at G7 level (cf. G7 Takamatsu Declaration, G7 Working Group on Cybercrime) and/or at G20 level. Therefore the fact that Italy will host the next G7 meeting, while Germany will host the next G20 should be seen as an opportunity for the promotion of a more sustainable multi-stakeholder model for debating the issue security versus privacy with the opening the debate to the general public.

Monetarisation of personal data

The issue of the monetarisation of personal data was debated in a flash session. Participants agreed that it became common sense that the personal data today is the new currency but interestingly enough its concrete value still remain unknown. It would be therefore highly desirable to acquire from the data controllers who are processing the data an estimation on the real value of one piece of personal data. It was also agreed that open information on the issue would be much welcomed.

It would also be beneficial if there would be some risk evaluations concerning data processing operations and if the data controllers were to make them public. It was also agreed that there should be a common risk indicator system available for the users which could explain in a plain language the risk one operation could entail for the data subject. It was finally reiterated that awareness raising and information spreading are crucially important in this respect.

    by Peter Kimpián

Report of Péter Kimpiàn on participating in CODEXTER Drafting Group on SIT (Roma, 13-14 June 2016)

Following the nomination by the TP-D Bureau on its meeting of December 2015, I have participated in the work of Committee of Experts on Terrorism (CODEXTER) Drafting Group on Special Investigation Techniques (DG SIT). The participants to the drafting group were members of relevant Council of Europe (CoE) committees: CODEXTER, CDPC, CDMSI, T-CY, T-PD and MONEYVAL. The DG SIT convened for the first time on 18th February 2016 at the Italian Ministry of Justice in Rome. The purpose of the DG SIT was to update Recommendation 2005(10) on special investigation techniques in relation to serious crimes, including acts of terrorism (hereafter the Recommendation).

The second meeting was convened on 13-14 June 2016 at the same place and was dedicated to the analysis of the amendments to the preamble of the Recommendation and its Explanatory Memorandum. Particular focus was given to the amendments aimed at updating the SIT Recommendation by addressing the technical capabilities developed since 2005 and including the financial investigation techniques among the special investigation techniques covered by the Recommendation. It was again considered necessary to balance the application of SIT by further emphasizing in the text the need to adhere to human rights and the principle of rule of law.

On behalf of the T-PD I emphasised the importance of the integration of principles and considerations on protection of privacy and of personal data as foreseen by Convention 108 in order to produce a well-balanced draft Recommendation. The DG SIT took on board every suggestion in this respect, therefore the final version can be seen as a consensual text. In the second meeting the main discussion was about the scope of the Recommendation, the interpretation of the ECtHR's relevant case law and the main provisions and definitions and their substantiation in the Explanatory Memorandum. With the member of the CDMSI we have formulated a text proposal during the meeting in which we have summarised the main principles stemming from the ECtHR's jurisprudence related to the protection of human rights to be respected by national authorities while using SITs (regardless its purpose) which also was integrated in the text in its entirety.

A consolidated version of the draft will be prepared by the secretariat of CODEXTER and due to be ready soon. The draft text will also be circulated in the other Committees involved for further comments. The adoption of the final draft is scheduled for the second plenary meeting of CODEXTER, which will take place at the end of 2016.

by Peter Kimpián