

39th International Conference of Data Protection and Privacy Commissioners ICDPPC

Hong Kong

27 September 2017

ICANN & Council of Europe Side Event

(13:30 – 15:00 / Venue: Camomile, Lower Level II)

Opening remarks

The Council of Europe is an international organisation based on the protection of human rights, democracy and rule of law. It was founded in 1949, it has currently 47 member states, covers approximately 820 million people and operates with an annual budget of approximately half a billion euros. It is distinct from the European Union whose predecessor was created in 1951 primarily for economic reasons, while the Council of Europe was since its foundation perceived as the “soul of Europe” based on the shared values and principles of democracy, the defence of human rights and rule of law.

It was in this spirit that the Council of Europe has requested observer status within the Governmental Advisory Committee (GAC) of ICANN in 2010 and got involved in ICANN’s work since then. Focused on the importance of the integration of the universally recognised principles on the respect for human rights and rule of law, the Committee of Ministers of the Council of Europe issued a declaration on “ICANN, human rights and the rule of law” in 2015 recalling that *“Member States have a primary legal and political obligation to protect human rights as enshrined in the European Convention on Human Rights (...) it includes the right to freedom of expression and access to information, the freedom of assembly and association, and the right to private and family life, (...) and also includes the protection of personal data as safeguarded by the Convention 108.”*

The Council of Europe has an integrated approach aiming at both the protection of human rights and respect for the rule of law. It was in this spirit that we facilitated a meeting between ICANN communities and senior data protection experts, called the “Privacy Day at ICANN58” held earlier this year in Copenhagen with the participation of the UN Special Rapporteur on the right to privacy, the European Data Protection Supervisor, the co-chair of Article 29 Working Group, the chair of the Council of Europe Data Protection Committee, the Data Protection Officer of Interpol and myself. This event was an outstanding opportunity to re-initiate or actually start a dialogue on privacy and data protection related considerations and their integrations into ICANN policies.

We are here today to continue this high level discussion, with representatives of ICANN coming to meet the global privacy community, while in Copenhagen it was the contrary.

For one of the biggest data controllers in the world, the processing of personal data has a very important role, but I suggest to direct our attention to the questions which come out of the discussion we had in Copenhagen: the publicity of WHOIS data, the third party access to data and the issue of accountability.

It has been reported that ICANN after the Privacy Day of March this year immediately took some actions in order to tackle the situation from which we will hear, I hope more in details from the panellists. On the other side, the “data protection team” who participated in the Copenhagen event also prepared concrete inputs on how to move forward to overcome the existing difficulties. I would be much curious to hear more about that as well.

Let me finally express my gratitude to the Privacy Commissioner for Personal Data of Hong Kong, the organiser of this conference, as well as to ICANN and its communities for contributing to the organisation of this this event. I am more than sure that this will provide a series of benefits to the involved parties, ranging from a better mutual understanding, a facilitated contact and above all the continuation of the dialogue on the underlying issues.

I wish you a successful discussion and that this dialogue will bring a new era in ICANN in respect of the rights to privacy and data protection.

Speaking elements for the discussion

- Recall the differences between human rights and public interest and the practical articulation of this difference.
- Draw attention to the rising responsibility companies involved in the functioning of the internet is having
- Explain the relation between a data controllers accountability and the data processing it undertakes
- Underline the necessity of a clear and exhaustive purpose statement which are in line with the mission/mandate of the organisation
- Support the discussion on uniform mechanism procedure for access to data by third parties (pursuing a legitimate purpose, a valid legal basis, the compliance to necessity and proportionality principles, having for example a specific form with standardised content-requirement, etc.). Precise the difference between state and private parties
- Underline the importance of the case-by-case approach
- Recommend the setup of advisory services for registrars, registries, registrants how to deal with third parties' access requests, foresee a transparent conflict-handling mechanism
- Support the initiatives on information sharing between stakeholders on illegal use, misuse of domain names without personal data exchange
- State CoE position on content regulation. Underline the importance of a guidance and display of education materials on the different procedures to follow in the case of content removal request and domain name problems taking into account all the privacy and data protection considerations (legal basis, jurisdiction, procedures to follow, legitimacy, etc...)
- Suggest solutions found at CoE to overcome the difficulty that may arise from the difference in jurisdictions between players

- Call on third states already member or observer to Convention 108 and/or Convention on Cybercrime to get engaged with ICANN issues and to help to disseminate good examples
- Recommend to third states to join Convention 108, Convention on Cybercrime, the Budapest Convention on Cybercrime and possibly the “Lanzarote” Convention
- Recommend for ICANN to setup a working group on privacy issues and stay engaged on privacy matters with CoE Data Protection Committee

Topic:	ICANN and Privacy
Speaker(s):	Jan Kleijssen, Director of Information Society and Action against Crime, Council of Europe Joseph Cannataci, UN Special Rapporteur on Right to privacy, UN Giovanni Buttarelli, European Data Protection Supervisor, EU Theresa Swinehart, Senior Vice President, ICANN Becky Burr, Member of the Board, ICANN
Description:	This event will aim at discussing the relevance of privacy and data protection considerations and inclusions into ICANN policies and will contribute to a better mutual understanding of the underlying privacy issues.
Time/Venue:	27 Sep 2017 1:30pm – 3pm; Camomile (Lower Level II)