

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Strasbourg, 25 November / novembre 2015

T-PD(2015)03Mos

**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**

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## **Report by Nevena Ruzic - Note on the participation at the 10th Internet Governance Forum, Istanbul, Turkey, 1-5 September 2014**

Internet Governance Forum – IGF was organised in Istanbul, Turkey from 1 to 5 September 2014. 2<sup>nd</sup> Vice-Chair of the Consultative Committee (Nevena Ruzic) attended two sessions as a speaker and took part in the bilateral meeting with Ukrainian delegation to the IGF. She also took part, as a participant, in several sessions dedicated to online privacy and information access.

The session “Alternative routes protecting human rights on the Internet” was held on 4 September under the stream “Internet and Human Rights”. The session was organised by the EU-funded MAPPING project and moderated by Joseph Cannataci. The main aim of the session was to promote the MAPPING Project. As presented one of the goal of the project research is to identify “*parallel universes*’ in cyberspace that could be a solution for promoting human rights”. The representative of the T-PD talked about the Convention 108 (and the process of Modernisation) as well as the positive obligation of the states under the European Convention on Human Rights, and emphasised the importance of keeping internet away from data localisation and making boundaries.

More information about the session, the list of speakers is available at: [http://www.intgovforum.org/cms/wks2014/index.php/proposal/view\\_public/82](http://www.intgovforum.org/cms/wks2014/index.php/proposal/view_public/82)

The session “Transnational Surveillance & Crossborder Privacy Protections” was held on 5 September under the stream “Internet and Human Rights”. The focus of the session was the importance and means to protect privacy, in particular private communications, especially vis-à-vis state control including foreign states. The session was moderated by Katitza Rodriguez from the Electronic Frontier Foundation, and the panellists, representing different stakeholders, presented different legal regimes aiming at protecting privacy. The representative of the T-PD talked about the Council of Europe’s regime, including pending cases of the European Court of Human Rights (i.e. so called Big Brother Watch Case) and the case against Serbia that involved access to information pertaining to number of communication interception by national security agency.

More information about the session, the list of speakers is available at: [http://www.intgovforum.org/cms/wks2014/index.php/proposal/view\\_public/220](http://www.intgovforum.org/cms/wks2014/index.php/proposal/view_public/220)

On 5 September, the Secretariat organised meeting with the Ukrainian delegation to the IGF comprising of the representatives of the ministries competent for media and information society as well as of the Ombudsperson’s office, which is dealing with personal data protection. The aim of the meeting was to exchange experience and emphasise the significance of the cooperation under the auspices of the Council of Europe and most notably T-PD.

**Side Note:** along with the IGF, the “Internet Ungovernance Forum” was organised in order to raise awareness of the international community about the situation regarding freedom of expression, online freedom in Turkey. The organisers of the event claimed that numerous sessions proposed in the preparatory stage of the IGF were refused as being not favouring the host of the IGF, i.e. Turkish authorities. More information about the Internet Ungovernance Forum is available at: <https://iuf.alternatifbilisim.org/>

Note prepared by Nevena Ruzic

## Report by Alessandra Pierucci - ICANN 51 - Los Angeles, 12-15 October 2014

I participated in the 51st Meeting of ICANN as vice-Chair of the Consultative Committee of Convention 108 (T-PD).

The main aim of the mission was to introduce and promote the topic of human rights in the context of ICANN. The critical issues in respect of possible clashes of ICANN policies with human rights, as protected by the Council of Europe (but also within other international fora as the United Nations), were signaled in the Report "ICANN's procedures and policies in the light of human rights, fundamental freedoms and democratic values" prepared by Thomas Schneider and Monika Zalneriute, which was mentioned on more than one occasion during the meeting, as a remarkable testimony of the impact on fundamental rights in such context.

Notwithstanding the ICANN framework, by its nature not focused on human rights protection, the result of the mission was substantively positive.

The need to pay the due attention to human rights has been evoked on several meetings, and not only at "constituency level" but also in the broader context of the Governmental Advisory Committee(GAC) (see below).

Among the most significant elements of the several meetings of ICANN 51, I signal the following:

- **Opening Ceremony** – In the Opening Ceremony, the President of ICANN, Fadi Chehade, announced that a new position dealing with "Consumer Safeguards e Contractual Compliance" has been created. This new office – together with consumer protection and health - will deal with privacy issues. It will take some time of course to assess whether this announcement will be followed by a substantial consideration of data protection issues.  
As regards Whois, Chehade emphasised the extremely easy access to the information contained in the web site. Moreover, he stressed that the very high rate of compliance with contract obligations by registrars and registries shows that the system works properly and does not need substantial changes.  
Finally, he underlined that in the new strategic plan for ICANN (that has been voted at the end of the meeting <https://www.icann.org/en/system/files/files/draft-strategic-plan-2016-2020-25jul14-en.pdf>) a new item has been included, namely the "global public interests" related to ICANN's activities. The definition and allocation of responsibilities and accountability on ICANN in respect of public interests must however be carried out considering the (commercial) mission and the limited remit of ICANN, as highlighted by Chehade.  
In respect of forms of cooperation between ICANN and law enforcement authorities, Chehade underlined that law enforcement activities cannot be considered as being included in the mission of ICANN and that ICANN will cooperate in this field as far as necessary.
- **Elections for Presidency of GAC** - Thomas Schneider (Switzerland – also CDMSI's Vice-Chairperson) has been elected as the new President of the GAC. During the GAC meeting, T. Schneider underlined that fundamental rights should be duly considered from the architecture of ICANN policies also to avoid that the same companies involved in ICANN activities are called upon to comply with conflicting obligations coming from domestic laws.  
Olga Cavalli (Argentina), Henri Kassen (Namibia) and Gema Campillos Gonzalez (Spain) have been elected as vice-chairs. Albania, Dominican Republic, Gambia, Niger and St. Lucia, were welcomed as new members of the GAC.
- **GAC and Human Rights open meeting** - During the meeting it became clear that it is a shared interest to ensure that ICANN policies are carried out in compliance with human rights international framework, also to allow the parties to comply with national law obligations smoothly and with no contradictions with the activities requested by the ICANN framework. The respect for human rights is also an added value in order to implement ICANN's accountability which is one of the declared main targets of ICANN. Peru proposed the idea to carry out a revision of ICANN's bylaws so that an explicit reference to human rights is included. Support for this proposal was expressed by many delegations (including UK, which underlined the need to provide for a clear definition of ICANN's

responsibilities in particular in respect of freedom of expression and the right to privacy). However, the US delegation, while acknowledging the need to reflect upon this topic, considered the possible revision of the ICANN's bylaws as being premature. The Communiqué, which was then adopted on the 16<sup>th</sup> of October, only reports that the GAC, during the meeting, continued its discussions from the London meeting concerning possible application of human rights and international law to ICANN activities and that the GAC will work inter-sessionally to assess a range of issues including legal considerations and the possible role of human rights considerations. Moreover, the Communiqué states that the concept of public interest should be seen as encompassing the larger interest of the different communities affected by Internet Governance processes and not be limited to the interests and objectives of any group or set of stakeholders. Finally, it states that there are a wide range of Whois-related issues that have significant implications for both the GAC and the wider community, including: Accuracy, Conflicts with National Privacy, Privacy/Proxy Accreditation issues and Implementation of Thick Whois.<sup>1</sup>

- **Non Commercial Stakeholder Group (NCSG) meeting.** The purpose of the Non Commercial Stakeholder Group (NCSG) is to represent, through its elected representatives and its Constituencies, the interests and concerns of noncommercial registrants and noncommercial Internet users of generic Top-level Domains (gTLDs), thereby providing a voice and representation in ICANN processes to non-profit organizations that serve noncommercial interests, consumer protection, public interest policy advocacy, children's welfare, scientific research, human rights, etc. During the meeting, together with Lee Hibbard, I made a presentation on data protection issues, in particular highlighting the concerns on data retention and public availability of personal data on Whois, as expressed by the Article 29 Working Party and the T-PD. The audience expressed sensitivity regarding the need for complying with fundamental rights and data protection parameters within ICANN.

Some participants suggested that, as a preliminary work, a clear definition of the human rights at stake in respect of ICANN policies should be carried out. The main concern is that a too long list of fundamental rights (including e.g. health, social rights, etc.) may be considered in the agenda of NCSG, thereby fragmenting the work and not allowing a clear and effective focus on the critical issues at stake. Moreover, the introduction of additional fundamental rights, with a social connotation, could be perceived as an excessive request to ICANN which would be called upon to exercise a too proactive role in defending rights. The suggestion was indeed to consider, at least at this early stage, only those human rights - such as freedom of expression, freedom of association and right to privacy - which have a direct link with the activities of ICANN in on line framework.

- **Report 'ICANN's procedures and policies in the light of human rights, fundamental freedoms and democratic values'** As stated before, the Report has been mentioned on more than one meeting as a remarkable document signaling the repercussions of ICANN policies over fundamental rights. Some noted that the Report (which considers, amongst others, the topic of surveillance in relation with data retention policies) could be more balanced in acknowledging the law enforcement interests.

**Non Commercial Users Constituencies (NCUC) Meeting – A human rights perspective on ICANN's policies and procedures** - During the meeting (where I made another short presentation

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<sup>1</sup> In respect of Thick Whois, it should be noted that for the generic top-level domain (gTLD) registries, ICANN specifies Whois service requirements through the registry agreements (ICANN 2009 Registry Agreements) and the Registrar Accreditation Agreement (RAA). Registries satisfy their Whois obligations using different services. The two common models are often characterized as "thin" and "thick" Whois registries. This distinction is based on how two distinct sets of data are managed. One set of data is associated with the domain name, and a second set of data is associated with the registrant of the domain name. A thin registry only stores and manages the information associated with the domain name. This set includes data sufficient to identify the sponsoring registrar, status of the registration, creation and expiration dates for each registration, name server data, the last time the record was updated in its Whois data store, and the URL for the registrar's Whois service. With thin registries, Registrars manage the second set of data associated with the registrant of the domain and provide it via their own Whois services, as required by Section 3.3 of the RAA 3.3 for those domains they sponsor. COM and NET are examples of thin registries. Thick registries maintain and provide both sets of data (domain name and registrant) via Whois. INFO and BIZ are examples of thick registries.

on data protection issues), it was clear that there is a strong appetite for human rights protection and for the need to continue discussing on such topic at both formal and informal level.

It was often recalled the need to start the process promptly and contribute to the implementation of human rights at an early stage of policies design, before negative repercussions fall on individuals. After the interventions of some participants from the pharmacy sector who underlined that ICANN should also consider the impact of its policies on the health of individuals, many participants reiterated the need to keep the scope of the work narrow and basically focus on “information fundamental rights”.

It was suggested that a group of experts should be constituted in order to provide the necessary expertise to tackle the criticalities at stake. It was also stressed, that in particular in respect of data protection issues, being the work particularly heavy, the support of experts is essential.

It was then suggested that a pre-event may be organized in Marrakech (ICANN 52, 8-12 February) to start bringing the different parts of communities together and start identifying the fundamental rights on which the process should start. In the meanwhile the interested representatives may start planning the work via conference calls.

The support by the Council of Europe in this process was asked by more than one representative.

It was also suggested that the group of experts should work on case studies in order to have a better representation of the real problems at stake, and that ICANN related issues should be open up to other international fora as the IGF.

**Conclusions and possible follow up** As mentioned before, within the ICANN meeting a strong wish has been expressed, at both constituency and GAC level, to continue exploring the impact of ICANN policies on fundamental rights.

The right to privacy, freedom of expression and freedom of association were identified as the crucial human rights to be considered at this stage.

In respect of data protection rights, at the constituencies level a strong demand for more expertise was raised.

Against this background, it would be therefore advisable to ensure follow up by :

- attending, where possible, future ICANN meetings;
- having an expert Report prepared to complement the Report by T. Schneider and M. Zalnieriute, specifically assessing the RAA and its proposed successor in light of data protection standards.

*Alessandra Pierucci*

**Report by Claire Gayrel - 2nd International Conference on cyberlaws,  
cybercrime and cybersecurity, New Delhi, 20 November 2014**

**Claire Gayrel**  
**Senior Researcher at CRIDS**  
**University of Namur**

**Sophie Kwasny**  
**Data Protection Unit**  
**Council of Europe**

28th of November 2014

Report regarding participation the 2<sup>nd</sup> International Conference on Cyberlaws, cybercrime and cybersecurity, 20th of November 2014, New Delhi

**General feedback**

The conference was globally interesting. It gathered about one hundred participants, with a great majority of Indian. I have been invited to participate to two panels : « cybercrime » and « Council of Europe Convention on Cybercrime. »

In general, interventions focused on cybercrime issues, security issues, problems of jurisdictions and governance of Internet. Privacy and data protection issues were raised on several occasions, almost exclusively in relation to Edward Snowden's revelations regarding NSA surveillance programs. It appeared very clearly that US practices in this respect raise important concerns among Indian officials. In that way, privacy and data protection are therefore primarily understood from the point of view of illegal interception of data by foreign authorities, implying that there is a strong concern for the violation of Indian sovereignty. It is interesting to notice that the « Snowden scandal » is therefore contributing to raise awareness about these challenges.

I have focused my intervention on the « necessity to balance the fight againsts cybercrime with rights to privacy and data protection ». I have recalled fundamental european jurisprudence (ECHR, *Klass v. Germany*, 1978) and based by intervention on the example of the Data retention Directive and its recent annulment by the European Court of Justice on Human Rights grounds. This intervention was received very positively by numerous participants in the audience. In general, participants were not very aware about the question of balancing human rights with law enforcement objectives. Although the topic of the conference was certainly not focused on data protection, I believe the message that privacy and data protection are necessary to regulate the digital environment have been well understood.

**Specific feedback for the Council of Europe**  
**Adhesion to the Budapest Convention**

According to Prof. Rekha Jain who was invited to participate to the specific panel dedicated to the Budapest Convention on cybercrime, there is a strong diplomatic obstacle to the adhesion of India to this Convention. Indeed, the fact that the adhesion of India would have to be approved by the Committee of Ministers is perceived in India as a very negative factor.

Another major problem certainly relates to article 15 of the Convention. According to Prof. Rekha Jain, it is unlikely that India standards in the field of freedom of expression would evolve in order to fit those established by the Council of Europe.

**Adhesion to CoE108**

According to Pavan Duggal, since privacy and data protection issues are relatively new concerns in India, adhesion to CoE 108 is not at the agenda of the Indian Government. In general, the Council of Europe is perceived as a « far-away » organization, moreover « european » organization and there is little interest for India to join previous existing instruments. A modification of such perception could only occur very progressively. In a first time, only an individual participation of an Indian expert to a CoE meeting could be envisaged. Further official participation of government representatives can only be envisaged in a second

time. Pavan Duggal would like to know if there is any possibility for him to participate individually (as an individual expert from India) to any CoE meeting on data protection.

I remain available to discuss in more details any aspect of this brief summary report.

Kind regards,

Claire Gayrel



## Report by Dr. Monika Zalnieriute - ICANN 52, Singapore, 8-12 February 2015

I participated in the 52nd Meeting of ICANN as a Council of Europe expert.

### Goal of the Mission

The main goal of the mission was to continue the dialogue on human rights as they relate to ICANN policies within ICANN meetings which was initiated in ICANN 50 in London, continued in ICANN 51 in LA, and to achieve some more tangible outcomes, such as potentially the establishment of a cross-constituency working group (CCWG) or a cross-constituency working party (CCWP) on human rights.

### Personal Responsibility

By closely cooperating with a small group led by Lee Hibbard (Council of Europe) and Niels ten Oever (Article 19) and comprised mainly of members of the Non-Commercial Users Constituency ('NCUC') (and in particular Stefania Milan, Marillia Maciel and Rafik Dammak) I had personal speaking responsibility, based on my two reports on the subject (1. Council of Europe Report "ICANN's procedures and policies in the light of human rights, fundamental freedoms and democratic values" released in June 2014 and updated in October 2014; as well as 2. Article 19 Report 'ICANN's Corporate Responsibility to Respect Human Rights', released in February 2015) at the human rights slot on the 11th February 2015.

In particular, my duty was to lay ground for the community discussion and introduce and present to various ICANN constituencies both:

1. the international human rights framework – and why is it important to ICANN;
2. the corporate social responsibility of ICANN to respect human rights.

The visual material of my presentation ('ICANN's Corporate Responsibility to Respect Human Rights') is available here:

[https://prezi.com/hpfqnsbkgpa9/icann-humn-rights/?utm\\_campaign=share&utm\\_medium=copy](https://prezi.com/hpfqnsbkgpa9/icann-humn-rights/?utm_campaign=share&utm_medium=copy)

### Outcomes

Both the CoE Report as well as Article 19 Report on human rights were mentioned on many occasions during ICANN 52: the GAC, Constituency groups as well as by the ICANN Board itself repeatedly referred to these documents as a fundamental basis for initiating the discussions on the ICANN's policies impact on fundamental rights.

Notwithstanding the well-established resistance of some ICANN sectors to accept its corporate responsibility to respect human rights in its operations, the result of the mission was substantively very positive –

On governmental level,

- 1.) many governments within the GAC expressed concerns related to human rights, and gratefully referred to Council of Europe's work in the area;
- 2.) the GAC has issued a communiqué with 3 paragraphs on human rights;

- 3.) the GAC established an internal human rights working party, supported by all the GAC members who raised voice in the sessions, including the USA;
- 4.) the GAC agreed to cooperate and participate in the cross-constituency work on human rights.

On constituency level,

- 1.) many constituencies, including the registries, the registrars, the end-user and others, expressed their concerns related to human rights & ICANN;
- 2.) the consensus was reached that further cross-constituency action was needed – in the form of a cross-community working group or a cross-community working party on human rights, after assessing which of these structures would be the best option;
- 3.) Terms of reference for this cross-community work will be developed for the ICANN 53 in Buenos Aires, and potentially earlier.

The activities and outputs of the NCUC members on human rights subject (including our presentation and the 2 reports) so far is available here:

<http://www.ncuc.org/member-activities/human-rights-and-corporate-social-responsibility/>

## Conclusions

### 1. Potential Follow Up

In the ICANN 52 meeting not only a strong wish has been expressed, at both constituency and GAC level, to continue exploring the impact of ICANN policies on fundamental rights, but the discussion led to certain initial tangible outcomes (the working parties/groups on human rights both within GAC and cross-constituency), which were not imaginable a year ago.

Among constituencies it was decided to further the contact with Supporting Organization and Advisory Committee (SO/AC) chairs in order to jointly assess the way forward and the best way to foster cross-community engagement. It was decided that terms of reference for this cross-community work will be developed.

Not wanting to alienate the business groups and other stakeholders, the focus was mainly on the 1st generation human rights - right to privacy and data protection and freedom of expression in particular, avoiding to go, e.g., into intellectual property. Although certain other rights, such as the right to access to information, were also signaled by the participants.

### Lack of Expertise, Resources and Funding

Concerns of lack of expertise and inability of individuals to accept even greater voluntary workload on solely voluntary basis within various working groups that they participate within ICANN structures were strongly raised both among NCUCU as well as more generally within GNSO and other constituencies. It was suggested by many participants that a group of experts should be convened in order to provide the necessary expertise to tackle the human rights issues involved. The support & expertise by the Council of Europe in this process were mentioned and asked by more than one representative.

Having in mind that ICANN is unlikely to provide financial support for the initiative (at least not until it complied with all the formal requirements and registrations) various discussions on the potential sources of

funding to cover substantial analyses and work took place on the last day of the meeting – 12th February, where interested stakeholders (mainly the ones mentioned in the beginning of this report) discussed potential strategic actions.

For the Council of Europe:

In order to affect the substantive change in the area of human rights within ICANN, it would be advisable for the Council of Europe to:

- Continue attending future ICANN meetings; and definitely Buenos Aires 53 to strategically maximize the momentum gained,
- Having expert analysis of the WHOIS in the light of its reform is especially desirable; taking into account the lack of expertise and substantial workload of the WHOIS working group members,
- Having expertise reports, case studies or analyses on human rights, corporate social responsibility, and due diligence prepared to complement the earlier Reports – both in the context of international law (as it related to GAC) and corporate social responsibility (as it relates to ICANN as a corporation);
- As regards the latter, the detailed paper on how to implement data protection and free speech friendly policies – using the corporate vocabulary would be very beneficial;
- As regards the former, closely following the GAC human rights working party, and perhaps preparing certain analyses on the need of balance between the interests of law enforcement (the USA Rep wanted to tie these together) and human rights.

**Rapport de Jean-Philippe Walter (Président du T-PD), Conférence de l'Unesco,  
Paris, 3 - 4 mars 2015**

Participation de Jean-Philippe Walter, Président du T-PD, à la Conférence de l'Unesco des 3-4 mars 2015 à Paris.

Outre son intervention à l'atelier 7, le Président a participé aux réunions visant à finaliser le texte de la Déclaration finale de la Conférence\* ainsi qu'aux autres séances de discussion.

\*Texte accessible à cette adresse : <http://www.unesco.org/new/en/netconference2015>

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06.03.2015/WJ

InterCONNECTer les ensembles : options pour l'action future

Conférence sur l'étude de l'UNESCO sur l'Internet concernant l'accès à l'information, la liberté d'expression,  
le respect de la vie privée et l'éthique

3 – 4 mars 2015, Paris

Séance en Atelier 7 Respect de la vie privée

Intervention de Jean-Philippe Walter,

Préposé fédéral suppléant à la protection des données et à la transparence,

Président du Comité consultatif de la Convention du Conseil de l'Europe pour la protection des personnes à l'égard du traitement automatisé des données à caractère personnel (Convention 108)

Je vous remercie de me donner l'opportunité de prendre la parole lors de ce second atelier consacré à la vie privée. Le rapport qui nous est soumis me paraît constituer une bonne base pour les discussions à venir, car il a permis d'identifier toute une série de questions qui méritent notre attention. L'atelier précédent a permis de mettre le doigt sur un certain nombre d'aspects qui devraient encore être approfondis. Il s'agit en particulier de la nécessité de mieux énoncer les principes de base de la protection des données, de rappeler les droits des personnes et de souligner l'importance du contrôle par des autorités indépendantes du respect des exigences de protection données. Je n'y reviens donc pas. Je me limiterai à 5 observations qui devraient être reflétées dans le rapport et dans le document final :

1) Permettez-moi au début de cette brève intervention de rappeler et de souligner que le droit à la protection des données et au respect de la vie privée lors du traitement de données à caractère personnel est un droit de l'Homme qui doit être universel et garanti à toute personne quel que soit sa nationalité, sa race, son sexe ou sa résidence. Ce droit, bien que du même niveau que l'ensemble des autres droits et libertés fondamentales, est néanmoins le préalable nécessaire à l'exercice des autres droits et libertés lors de traitements de données personnelles. Il est également une garantie du développement et du maintien de nos sociétés démocratiques. Il ne s'agit évidemment pas d'un droit absolu et des restrictions sont possibles, notamment en faveur de la liberté d'expression. Ces restrictions doivent respecter certaines conditions telles que celles définies dans la jurisprudence de la Cour européenne des droits de l'homme et notamment la légalité de la mesure, la proportionnalité et la nécessité et la présence d'un intérêt légitime supérieur.

2) Par rapport aux enjeux actuels du numérique, je ne crois pas qu'il faille réinventer la roue et créer de toute pièce un nouveau cadre réglementaire ! Il s'agit plutôt de renforcer l'existant et de créer là où cela s'avère nécessaire de nouveaux droits et principes. Il existe en effet un cadre juridique qui définit les principes de base de la protection des données, y. c. les droits des personnes. Ces principes s'appliquent à tout traitement qu'il intervienne au travers de l'Internet ou hors ligne. Au niveau international, je fais en

particulier référence aux principes directeurs de l'ONU du 14 décembre 1990 (résolution A/RES/45/95 adoptée à l'unanimité par l'Assemblée générale) que l'on ne peut pas ignorer dans un document onusien. Ces principes sont aussi ancrés dans la Convention 108 du Conseil de l'Europe ouverte à la signature le 28 janvier 1981. Cette convention est le premier et seul texte international juridiquement contraignant à vocation universelle. On retrouve ces principes dans d'autres textes et notamment dans le cadre juridique de l'Union européenne, dans la Convention de la CDEAO sur la cybercriminalité et la protection des données ou encore dans les standards internationaux de Madrid adoptés lors de la 31<sup>ème</sup> Conférence internationale des commissaires à la protection des données et à la vie privée (2009). Ces principes ont une portée universelle et ils devraient être clairement rappelés dans le rapport dont nous débattons. Au plan national, nous dénotons à ce jour quelques 110 Etats disposant d'une législation de protection des données.

3) L'existence d'un cadre juridique est fondamental, mais il n'est pas suffisant pour faire face au défi du traitement des données personnelles à l'ère du numérique. Il doit être complété par une approche technologique de la vie privée et de la protection des données permettant de mettre en œuvre les principes de protection des données et l'exercice des droits des personnes concernées. Le risque aujourd'hui est une domination de la machine et des algorithmes, décidant pour nous et orientant nos choix à l'aide notamment d'analyses prédictives. Il faut impérativement inverser cette tendance et développer et utiliser la technologie, les TICs d'une manière qui soit conforme aux exigences de la protection des données. Les technologies doivent être au service de l'Homme et non l'inverse. Tout un chacun doit pouvoir avoir la maîtrise de ses données (autodétermination informationnelle). Celles-ci sont des éléments de la personne et de son identité. Il faut absolument éviter le concept de propriété lorsqu'on aborde le droit à la protection des données qui relève des droits de l'Homme. Les données ne peuvent également, ne doivent pas être la propriété des entreprises ou des autorités publiques. Elles demeurent liées aux personnes dont elles émanent !

4) Au côté du cadre juridique et de la technologie, il est nécessaire de développer des politiques d'éducation, de formation et de sensibilisation aux numériques qui soient respectueuses des droits et libérés fondamentales. L'UNESCO me paraît ici pouvoir jouer un rôle privilégié.

5) Finalement et je conclus, dans un monde globalisé, l'objectif est d'aboutir à un respect universel et équilibré des principes de protection des données avec au final l'adoption d'une convention universelle. Je rappelle ainsi que la conférence internationale des commissaires à la protection des données et à la vie privée a lancé un appel à l'ONU d'élaborer une telle convention lors de sa 27<sup>e</sup> conférence (déclaration de Montreux, 2005). Je salue également la nomination prochaine d'un rapporteur des Nations Unies qui pourrait être le préalable à la création d'une agence mondiale de la protection des données. L'adoption d'une convention universelle demeure cependant un objectif de longue haleine. Des étapes sont possibles et nécessaires, notamment en s'appuyant sur la convention 108 du Conseil de l'Europe et son ouverture aux États tiers non membres de l'organisation. Il faut en effet éviter d'agir en ordre dispersé et de développer des initiatives dans tous les sens, au lieu de rassembler les forces et de travailler, chacun avec sa spécificité, à parvenir à cet objectif. J'appelle ainsi les secrétariats des diverses organisations internationales qui traitent de la problématique de la vie privée et de la protection des données à mieux coordonner leurs travaux.

## Report by Dr. Monika Zalnieriute, 57th IWGDPT, Seoul, 27-28 April 2015

I participated in the 57th Meeting of IWGDPT as a Council of Europe expert.

### Goal of the Mission

The main goal of the mission was to reach out and gain support from the members of the IWGPDT and continue highlighting human rights issues as they relate to ICANN policies not only within ICANN meetings, but also in other relevant international meetings. This initiative on ICANN and human rights was started in ICANN 50 in London, continued in the 9th IGF in Istanbul, ICANN 51 in LA and ICANN 52 in Singapore where it resulted in agreement to establish a cross-constituency working party (CCWP). Taking into account the strong momentum gained at the Singapore meeting in February 2015, this mission is a continuing attempt to achieve some certain tangible outcomes from other influential groups, and potentially the declaration by the IWGDPT on ICANN and data protection, which could, in turn, result in a lot of external pressure on ICANN to regard data protection issues more seriously.

### Personal Speaking Responsibility

I had personal speaking responsibility, based on my report on the subject - Council of Europe Report "ICANN's procedures and policies in the light of human rights, fundamental freedoms and democratic values" released in June 2014. In particular, my duty was to lay ground for the data protection expert discussion and introduce and present to various DPAs and other participants of the IWGPDT meeting with the data protection situation in the ICANN, and the current updates on the matters. And above, all, emphasize the need for them to contribute to this subject by issuing certain deliverables and opinions.

### Outcomes

The CoE Report was noted and welcomed by the IWGPDT members even before the 57th meeting (in the previous 56th session in Berlin) and it was discussed in detail in a current meeting as a basis for initiating the discussion on the ICANN's policies impact on data protection. The IWGPDT members were also informed of the latest developments, and the creation of the cross-community working party (CCWP) on ICANN's Corporate and Social Responsibility to Respect Human Rights as well as the establishments of human rights advisory body within Governmental Advisory Committee (GAC)

The IWGDPT has decided that:

- the action on the subject is needed and even crucial, considering the context and the momentum gained;
- that the IWGDPT working paper will be produced for the next meeting, which will result in either a position paper or a declaration on the subject by the IWGPDT;
- that the Secretariat of the International Conference of Data Protection and Privacy Commissioners will appoint an observer to attend ICANN meetings.

### Potential Follow Up & Role of Council of Europe

Thus, in the 57th IWGPDT meeting not only a strong wish has been expressed by the members to continue highlighting the impact of ICANN policies on data protection and privacy, but the discussion of the report led to certain initial tangible outcomes. The need to approach and challenge ICANN via various diverse channels

and institutions on data protection matters have been recognized. In this context, the IWGDPT will also contribute from now on.

Similarly as I wrote in my previous report on ICANN 52 Singapore, I repeat that the international consensus among various institutions is clearly emerging that there is a strong need to continue action on the subject. In order to affect the substantive change and meaningfully contribute, it would be advisable for the Council of Europe to:

- Continue attending future ICANN meetings; and definitely Buenos Aires 53 (there will be 2 separate meetings on ICANN & HR: 1. cross-constituency sessions; and 2.) the first meeting of the newly established CCWP) to strategically maximize the momentum gained,
- Having expert analysis of the WHOIS in the light of its reform is especially desirable (100 page report by ICANN working group on WHOIS should be out within a month); taking into account the lack of expertise and substantial workload of the WHOIS working group members,
- Having expertise reports, case studies or analyses on human rights, corporate social responsibility, and due diligence prepared to complement the earlier Reports – both in the context of international law (as it related to GAC) and corporate social responsibility (as it relates to ICANN as a corporation);
- As regards the latter, the detailed paper on how to implement data protection and free speech friendly policies – using the corporate vocabulary would be very beneficial;
- As regards the former, closely following the GAC human rights working party, and perhaps preparing certain analyses on the need of balance between the interests of law enforcement (the USA Rep wanted to tie these together) and human rights.

## **Report by Nino Sarishvili - 17th Meeting of Central and Eastern Europe Data Protection Authorities (CEEDPA), Duress, Albania, 29-30 April 2015**

17<sup>th</sup> Meeting Central and Eastern Europe Data Protection Authorities was held on April 29-30, 2015 in Duress, Albania. The theme of the meeting was: "Privacy and Technology: Challenges and Opportunities".

The Meeting consisted of four panels and an open session. It was opened by the Information and Data Protection Commissioner of Albania, Mr. Besnik Dervishi, Speaker of the Albanian Parliament Mr. Ilir Meta, Minister of Innovation and Public Administration of Albania, Ms. Milena Harito and the Ambassador of the Kingdom of the Netherlands to Albania, Mrs. Dewi Van De Weerd. The mentioned officials stressed the importance of the privacy, especially during the digital era, when the big amount of data is easily exchanged.

The 1<sup>st</sup> Panel of the meeting was dedicated to the **European Data Protection Reform**. During this Panel presentations were made by the Assistant European Data Protection Supervisor, Mr. Wiewiorowski; representative of the CoE 108 Convention Consultative Committee, Ms. Sarishvili and representative of the Italian Data Protection Authority, Mr. Lattanzi. Presentation made by the Ms. Nino Sarishvili concerned the work undertaken by the T-PD with focus on the Big Data. She spoke about the priority areas of the T-PD work, modernization of 108 Convention, challenges related to the Big Data, etc.

The 2<sup>nd</sup> Panel was related to the **Data Protection Authorities and their up to date experience**. Presentations were delivered by the representatives of the Kosovo Data Protection Authority, Montenegro Data Protection Authority, Bulgarian Data Protection Authority and Georgian DPA.

The 3<sup>rd</sup> Panel was on the **New Technologies and Case Studies**. The issue of the data subject consent was discussed by the Serbian Data Protection Authority. Representative of the Hungarian Data Protection Authority spoke about the online privacy of the children, the importance of the awareness rising among the young people and also covered the issue of drones. Representative of the Bosnia and Herzegovina talked on the issue of the public interest and disclosure of the sensitive data.

The 4<sup>th</sup> Panel was dedicated to the **New Technologies and their impact on the Privacy**. The Panel was moderated by the representative of the Council of Europe Data Protection Consultative Committee Ms. Nino Sarishvili. The presentations were made by the representatives of the Czech Republic, Slovak Republic, Poland and Macedonia. Issues related to the usage of CCTV, smart metering, importance of awareness rising on the privacy issues and technologies were discussed.

During the **Open Session** the representatives of Albanian data controllers spoke about their practices. Issues related to the accessibility of the personal data of the employees by the law enforcement bodies, mobile applications, cyber technologies, privacy by design were discussed. Data protection Authority of Morocco also made a presentation about the work of the DPA. At the end of the Open Session discussion was held about the balance between the freedom of expression, free access to public information and personal data protection.

At the end of the meeting the venues of the next meetings of the CEEDPA were determined. In 2016 the CEEDPA meeting will be held in Bosnia and Herzegovina and 2017 – in Georgia.

Detailed information about the 17<sup>th</sup> meeting of CEEDPA is available at: <http://idp.al/index.php/sq/introduction>



## **Report of Péter Kimpián on his participating at the conference „Emerging technologies and Human Rights” at the Council of Europe, Strasbourg, 4-5 May 2015**

An international conference on „Emerging technologies and Human Rights” was organised by DH-Bio at the Council of Europe, from 4-5 May 2015

([http://www.coe.int/t/dg3/healthbioethic/Activities/12\\_Emerging%20technologies/default\\_en.asp](http://www.coe.int/t/dg3/healthbioethic/Activities/12_Emerging%20technologies/default_en.asp) ).

Péter Kimpián, member of the Hungarian Data Protection Authority, represented the T-PD at the conference and gave a presentation at the panel “Data collecting and processing - New dimensions”. In the presentation the speaker gave a short introduction to the data protection regulation set forth by the Convention 108 and tried to showcase what is at stake with the evolution of technology from a privacy and data protection point of view.

As introduction starting with some basic definition the nature of the protection the privacy and personal data require was demonstrated. As a next step legal provisions with some practical examples in relation to the legal basis for data processing, data protection principles, rights of data subjects, information to data subjects was presented in detail as well as the new ways of processing personal data. The second part of the presentation focused on the challenges data controllers, enforcement authorities, legislators might face in the new era of Digital Age. Among those issues the data processing for different purpose, transfer of personal data, the big data analysis and the internet of things/everything was discussed in depth. As a conclusion the presentation offered some new instruments to be used in order to tackle the risk the new ways of data processing might represent towards privacy and personal data, namely the meaningful application of the privacy by design principle and the privacy impact assessment.

The presentation was well received and got lot of positive feedback and will certainly contribute to the overall goal of the conference: the preparation of a White Paper on ethical questions in relation to the use of emerging technologies. As a conclusion from a privacy and data protection point of view of the conference and following the feedback received alongside it can be established that in order to cope with the challenges the use of these emerging technologies implies for the Human Rights, especially to privacy and the protection of personal data we need to have a global and a top down approach. First of all, we must hurry up our reforms of legislations (Convention 108, EU Data package reform) in order to provide as soon as possible an adequate legal framework and instruments for the new ways of data processing and the protection of data subjects’ rights. In the meantime we should find viable solutions with the help of soft law and a meaningful and open cooperation among market players, stakeholders, governments, enforcement authorities. We must also encourage education, dissemination of information, public debate and the inclusion of NGOs to achieve a better social perception and to trigger more educated and informed choices of data subjects. In the new era of Digital Age we must find new innovative ways of legal and effective protection of human rights, i.e. privacy and protection of personal data which responds to the new challenges mainly stemming from the use of the new technologies and which guarantees the same, if not better level of the protection of human rights as the existing instruments.

## **Report of Péter Kimpián on participating at the 54th ICANN meeting in Dublin from 18-22 October 2015**

### **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) , 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, couple of workshops, had an important number of bilateral and ad-hoc working meetings. The attendance of TP-D expert to the conference was helped by Lee Hibbard, the Council of Europe's Coordinator for Internet policy and representative to Governmental Advisory Committee (GAC) who facilitated lot of formal and informal meetings with relevant stakeholders' representatives.

#### **1. ICANN**

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 Internet's unique identifiers. 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"), 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 accountability.

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.

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 have a considerable effect, 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 by Dr Monika Zalnieriute and Thomas Schneider (Report) was commissioned by the Council of Europe Secretariat,

in which the topic of the influence of ICANN's activity to Human Rights was put forward. The Report demonstrated that ICANN's policies' contained controversial elements from Human Rights protection point of view. In the Report the authors analysed the ICANN's New Generic Top Level Domains' policy, WHOIS and Registrar Accreditation agreements (RAA) and found that these policies and instruments can have negative effects on right to freedom of expression, freedom of association, freedom of religion and principle of non-discrimination, privacy and data protection. The report triggered discussion and initiatives to set up two separate working group and tasked to find solutions to the issues raised by the Report: Cross-Community Working Party on Human Rights (CCWP-HR), 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 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. In addition, 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 by integration of the human rights considerations into ICANN's bylaws. Whereas 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 to be mentioned that other working parties related to specific SOs and ACs were also 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 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 long Report introduced the UN Guiding Principles on Business and Human Rights into 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 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 WHOIS reform. 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 were from the beginning considered as the most relevant ones. It is without doubt 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, making most of it publicly available and having an extended and an established relation with law enforcement agencies, right to privacy and to protection of personal data in ICANN's policies and actual activities will remain in the future too one of the most important Human Rights.

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 and the International Working Group on Telecommunications 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. While the opinions and communications are extremely relevant they focus to broader issues without entering into technical details and more importantly they offer an analysis how the best could ICANN comply with a European concept of privacy and data protection.

The real change in ICANN on the perception of privacy and data protection issues came after the Report facilitated by the Council of Europe which led to the above mentioned progresses (creation of specific, horizontal working groups, publishing of the Paper for ICANN 54, mobilization of communities, involvement of external experts). Now, we can experience a more global approach to privacy and data protection issues and a 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, other are more focused on businesses and law enforcement considerations resulting in a situation where a wide range of working groups serves as discussion forum for these issues which they even pop up in meetings which are to be meant purely technical. Therefore it seems to be useful to take stock of working parties dealing expressly with privacy and data protection issues and to identify the policy areas where privacy and data protection are deliberately at stake.

- a. Horizontal WPs:
  - i. CCWP-HR (HR policy, CSR strategy)
  - ii. WP 4 of CCWP on Accountability (IANA transition related HR issues)
  - 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 (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. WHOIS Review policy
  - iii. Proxy Service Agreement, Proxy Services Accreditation
  - iv. RAAs
  - v. Thick WHOIS policy
  - vi. Public Safety policy

## **II. Outline of activity**

Identified the main issues and forum for privacy and data protection discussion 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 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 the 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 that it wishes to join
  
- 2. Medium term
  - i. At least one expert from TP-D should actively participate at ICANNs meeting at least in 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

iii. The expert should prepare drafts, presentations, reports on already discussed topics and should suggest new topics to be discussed in view of raising the level of protection of privacy and personal data.

iv. The expert should deliver expertise during the consultation of key documents

### 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 to 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, facilitate reports, recommendation on the protection of privacy and data protection in ICANN

v. TP-D should contribute to compile a transparency report (with special attention to LEA access) and a related reporting mechanism

## III. Conclusion

The participation of the expert from TP-D was deemed as timely by many participants as privacy and data protection issues are just getting slowly into the centre of conversations, 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 channelized properly as there is deliberately a need for that. There is real turning point which could be observed at the Conference as a considerable number of constituencies wish a change in the way of ICANN functioning, making the organisation a modern responsible global organisation which respects Human Rights. In achieving this, expertise that TP-D can be highly valuable based 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 the specific matters was truly welcomed by all constituencies, working parties, bodies and participants at high level too already at the Conference.

In conclusion we can sum up that there is a fairly promising and timely opportunity for TP-D to get involved in a global and influential organisation's policy making procedures and to contribute that the Council of Europe's core rights and values especially those related to the protection of privacy and of personal data are reflected in ICANN's future policies and activities which in the end can contribute to a more open, free and responsible internet world-wide.

by Peter Kimpián