
WHOIS and Data Protection Policy

Session 10, 19

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Session Objective

- Update the GAC Membership on development related to the Expedited Policy Development Process (EPDP) and discuss other relevant developments in terms of ICANN engagement with DPAs, impact on law enforcement needs and other legitimate users.
- The GAC will also discuss the outcomes of the expected ICANN66 Cross Community Session on this matter.

Background

Over the past decades, information pertaining to the individuals or entities holding a domain name (domain registration data) made available publicly through the WHOIS protocol and related WHOIS services¹, has grown to become an indispensable tool for attributing content, services and crime on the Internet. Consequently, WHOIS has been the subject of long-standing attention for the ICANN Community, including the GAC, particularly in relation to challenging issues such as concerns about the lack of protection of personal data, and the inaccuracy of registration data.

Defining the right approach to WHOIS - or as alternatively known, Registration Directory Services (RDS) - requires taking into account the important issues of data protection and the legitimate and lawful practices associated with protecting the public, including to combat illegal conduct such as cybercrimes, fraud and infringement of intellectual property, to ensure cyber-security, promoting user confidence and consumer trust in the Internet, and protecting consumers and businesses. Prior GAC Advice² and the ICANN Bylaws recognize these vital interests.

While various new data protection legal frameworks have emerged or will emerge across the world, the entry into force of the EU General Data Protection Regulation (GDPR) on 25 May 2018 spurred the ICANN Organization, Contracted Parties and the ICANN Community to bring WHOIS into compliance with applicable law.

Issues

Protecting the public in the context of the DNS requires taking into account the equally important issues of data protection and the legitimate and lawful practices associated with protecting the public, including to combat illegal conduct such as fraud and infringement of intellectual property, cyber-security, promoting user confidence and consumer trust in the Internet, and protecting consumers and businesses. Prior GAC Advice and the ICANN Bylaws recognize these vital interests.

Moreover, both the Article 29 Data Protection Working Party and the European Data Protection Board have recognized that *“enforcement authorities entitled by law should have access to personal data in the Whois directories”* and stated their expectation that ICANN should *“develop a WHOIS model that will enable legitimate uses by relevant stakeholders, such as law enforcement [...]”*.

However, as highlighted in GAC Advice and various GAC contributions since the ICANN60 meeting in Abu Dhabi (Nov. 2017), efforts to date by ICANN org and the ICANN Community have failed to adequately accommodate both the necessity of data protection and protection of the public interest. Currently, much of the once public WHOIS information is redacted with no real process or mechanism for accessing the information for legitimate use. Namely, law enforcement, cybersecurity experts, and intellectual property rights holders no longer expect to access information that is critical to protecting the public interest³.

¹ See ICANN's [WHOIS High-Level Technical Brief](#) (20 April 2018)

² See in particular the [GAC Whois Principles Regarding gTLD WHOIS Services](#) (28 March 2007)

³ For further discussion, see “Importance of a Unified Access to Non-Public gTLD Registration Data” in the GAC Webinar Discussion Paper attached to this briefing (23 October 2019)

Leadership Proposal for GAC Action

1. **Assess whether the EPDP Phase 2 has achieved the swift and considerable progress expected by the GAC** consistent with [Advice](#) in the [GAC Kobe Communiqué](#) (14 March 2019) and the Phase 2 [inaugural statement](#) (8 April 2019) by GAC Representatives on the EPDP Team
2. **Consider what could be an acceptable accreditation model for access to non-public gTLD registration data** by law enforcement and other legitimate public authorities
 - a. The GAC Small Group on GDPR/EPDP expects to share possible such models with the GAC Membership prior to the start of the ICANN66 meeting
 - b. GAC Members may wish to report on initiatives in their governments to gather the list of public authorities requiring access to non-public gTLD registration data (See Action Points in [ICANN65 Minutes](#), section 2.1)
3. **Discuss GAC expectations regarding the timely deployment of a Unified Access Model**, including:
 - a. A clear articulation by ICANN to the Community of its ability and willingness to take on responsibilities and liability associated with an access/disclosure model
 - b. Greater clarity and guidance from European Data Protection Authorities to ICANN regarding the feasibility of an access/disclosure model
 - c. Process and timing for completion of the development and implementation of an access/disclosure model

Relevant Developments

Overview of Current Status

- Following the [adoption](#) by the GNSO Council (4 March 2019) of the [recommendations](#) (20 February 2019) made in the first phase of the Expedited Policy Development Process on gTLD Registration Data (EPDP Phase 1), **several stakeholders provided input to the ICANN Board**, including:
 - The GAC in a [response](#) (24 April 2019) to the ICANN Board's [notification](#) (8 March 2019) of the GNSO's approval of the EPDP Phase 1 Policy Recommendations
 - The US Government in a [letter](#) from the Department of Commerce Assistant Secretary for Communication and Information (4 April 2019) to which the ICANN CEO [responded](#) (22 April 2019)
 - The European Commission in a [letter](#) and [public comment](#) (17 April 2019), and subsequent [clarification](#) (3 May 2019) per an ICANN Board [request](#) (26 April 2019)
 - Other stakeholders, as [reported](#) in the [public comment period](#) (23 April 2019)
- On 15 May 2019, **the ICANN Board took action** (detailed in a [scorecard](#)) on the EPDP Phase 1 Recommendations. It **adopted all recommendations but two** which it deemed not to be *"in the best interest of the ICANN Community of ICANN"*, which are expected to be further discussed as part of Phase 2 of the EPDP:
 - **Recommendation 1, Purpose 2⁴** which it sees as needing to consider recent input from the European Commission amid concerns that as currently worded, this purpose for registration data processing may be deemed inconsistent with the GDPR;
 - **Recommendation 12 (collection and display of the Organization field)**, given concerns that deletion (as opposed to redaction) of this information may result in loss of or changes to the name of the registrant, inconsistent with the public interest.
- The ICANN Board also [responded](#) to the [GAC Kobe Communiqué](#) (14 March 2019) by acknowledging each piece of [GAC Advice](#) (which focused on ensuring appropriate continuation of work in Phase 2 of the EPDP and implementation of Phase 1 recommendations). In addition the ICANN Board also accepted one of the four [pending GAC Advice on GDPR and WHOIS](#) from the [GAC San Juan Communiqué](#) (15 March 2018)⁵
- On 20 May 2019, the [Temporary Specification on gTLD Registration Data](#) expired as expected, and was replaced by the [Interim Registration Data Policy for gTLDs](#), which requires **Contracted Parties to continue to implement measures that are consistent with**

⁴ *"Contributing to the maintenance of the security, stability, and resiliency of the Domain Name System in accordance with ICANN's mission through enabling responses to lawful data disclosure requests."*

⁵ San Juan Communiqué §1.a.v: *a. the GAC advises the ICANN Board to instruct the ICANN Organization to: v. Ensure continued access to the WHOIS, including non-public data, for users with a legitimate purpose, until the time when the interim WHOIS model is fully operational, on a mandatory basis for all contracted parties;*

the Temporary Specification, pending the [implementation](#) of the final Registration Data Policy once implementation of the EPDP Phase 1 recommendations is complete.

- In the meantime, the contours of a future GDPR-compliant gTLD Registration Data Policy continue to be defined through interrelated work ongoing in two settings:
 - **The EPDP Team**, as part of Phase 2 of its deliberations towards the definition of a System for Standardized Access and Disclosure, made most progress by considering a [set of concrete use cases](#)⁶ which enabled the ongoing discussion of [preliminary policy recommendations](#), including [policy principles](#) and [building blocks](#).
 - **The engagement by ICANN org of the European Data Protection Authorities, in collaboration with the European Commission**, leveraging a possible model for unified access to non-public gTLD registration data (UAM) based on the [Technical Model](#) for Access to Non-Public Registration Data ([complete](#) since 2 May 2019) on the basis of which the ICANN org has been [seeking](#) to confirm it could consolidate responsibility for the processing activity of disclosure within UAM removing the legal liability from contracted parties for providing access to non-public gTLD registration data. On 25 October 2019, ICANN org's CEO [officially sought clarity from the European Data Protection Board](#) as to whether this model would comply with the GDPR, on the basis of a new paper [Exploring a Unified Access Model for gTLD Registration Data](#).
- Most recently, several significant developments should be noted:
 - A [GAC webinar on EPDP/gTLD Registration Data](#) (25 September 2019) proposed by the GAC Representatives on the EPDP Team and supported by a [Discussion Paper](#) (also attached in annex to this briefing), enabled a **GAC discussion** of:
 - The importance of a unified access to non-public gTLD registration data and the prospects for the implementation of such a model
 - Several policy issues being debated, including: accuracy of gTLD Registration Data and accreditation into a Standardized System for Access and Disclosure
 - **The GAC Small Group on GDPR/EPDP has started developing possible accreditation models for public authorities**, in connection with work conducted by the European Commission to identify all public authorities requiring access to non-public gTLD registration data. This is expected to be discussed in GAC plenary during ICANN66
 - **The EPDP Team [requested](#) (10 October 2019) that the ICANN Board clarifies its “*position on the scope of operational responsibility and level of liability (related to decision-making on disclosure of non-public registration data) they are willing to accept on behalf of the ICANN organization*”, considering that, currently “*at a***

⁶ These use case, proposed for illustration and discussion purposes only, discussing a wide range of real world scenario, discussed: who would be legitimate requestors for non-public data, what data elements would be disclosed, what the purpose would be for requesting the data, under what legal bases both requests and disclosures of the data would be made, and what safeguards would need to be put in place regarding access and use of the data.

critical junction”, the EPDP Team requires ICANN Board input “in order to further [its] work to produce realistic, timely, implementable policy recommendations”

Focus: EPDP on gTLD Registration Data

- On 20 February 2019, the **EPDP has concluded Phase 1 of its work** by releasing its [Final Report](#) to the GNSO Council, which [adopted](#) it on 4 March 2019.
- The EPDP Phase 1 report provides 29 policy recommendations to eventually replace the terms of the [Temporary Specification on gTLD Registration Data](#), and responds to a set of [charter](#) questions, a number of which were identified as a prerequisite (“gating questions”) to the EPDP discussing a “standardized access model” in its Phase 2.
- Since 2 May 2019, the EPDP Team has entered Phase 2 of its deliberations and resumed its [weekly meetings](#), with a few changes:
 - A new Chair, Janis Karklins, current Latvian Ambassador to the UN in Geneva and former GAC Chair, [nominated](#) (see Item 4, p.3) on 18 April by the GNSO Council
 - A slight recomposed GAC’s representation in the EPDP Team:
 - 3 GAC representatives designated as “Members”:
 - Ashley Heineman (US)
 - Georgios Tsenlentis (European Commission)
 - Chris Lewis-Evans (UK)
 - 3 GAC representatives designated as “Alternates”
 - Laureen Kapin (US)
 - Rahul Gossain (India)
 - Olga Cavalli (Argentina)
- The scope of work⁷ in Phase 2 includes:
 - Priority 1 items: the development of policy recommendations for sharing non-public registration data with third parties, also known as the **System for Standardized Access/Disclosure of Non-Public Registration Data (SSAD)**, including the definition of user groups, accreditation and authentication of third parties, purposes and legal basis for disclosure of personal data to third parties, codes of conduct, and the various associated processes.
 - Priority 2: Addressing a number of **issues not fully addressed in Phase 1** including: the distinction between legal and natural persons; the feasibility of unique contacts to have a uniform anonymized email address; WHOIS data accuracy; and possible additional ICANN purpose for processing data for research needs of its CTO Office.
 - Phase 1 recommendation not adopted by the ICANN Board: considering the ICANN board’s [resolution](#) (15 May 2019), the EPDP is also expected to deliberate further, in coordination with the GNSO Council’s engagement with the ICANN Board, on

⁷ which the GAC [advised](#) should be clearly defined (14 March 2019)

Purpose 2⁸ for processing personal data in the WHOIS, and the collection and display of the Organization field.

- Originally the EPDP Team had been working towards a Phase 2 Initial Report by ICANN66 and the Final Report by ICANN67. However, due to challenges in progressing its deliberations, under the latests [planning assumptions](#) the **EPDP Team targets the delivery of an EPDP Phase 2 Initial Report towards the end of 2019 and its final policy recommendations in April 2020**, after the ICANN67 meeting. As highlighted during the recent [GAC Webinar](#) (25 September 2019) and its associated [Discussion Paper](#) (also attached in annex to this briefing): *“it should be understood that the EPDP policy recommendations are likely to consist of high level assumptions, principles and guidelines which will require substantial implementation work before any centralized or standardized system may be put in place”*.
- **Currently, EPDP deliberations focus on policy requirements** needed in various [building blocks](#) of a Standardized System for Access and Disclosure, as part of a [preliminary set of policy recommendations](#), to eventually constitute the EPDP’s Phase 2 Initial Report.
- However, The EPDP Team reports being at a critical juncture where progress is dependant on a **clear delineation of the role and responsibility of the ICANN organization in any access model** in order *“to produce realistic, timely, implementable policy recommendations”*. This is why a [letter to the ICANN Board](#) (10 October 2019) as well as a set of [questions to the ICANN Org](#) (23 October 2019) were issued very recently. In effect, depending on the degree of centralization of decision making in the model, and the scope of processing being centralized, ICANN’s responsibility in decision making could range:
 - **From limited**, as in the existing distributed model of Temporary Specification in which registries/registrars independently respond to queries on a case by case basis;
 - **To extensive**, by either endorsing the legitimacy of a request for non public data, or issuing a determination of whether or not the registrar or registry should or must disclose the non-public data to the third party requester;
 - **Including (or not) some support functions** such as approving accrediting bodies, or functioning as an accrediting body itself.
- To date, the most significant work products of the EPDP Phase 2 include:
 - A proposed set of [Working definitions](#) (30 May 2019)
 - A set of [worksheets](#) on each of the key policy areas discussed (continuously updated)
 - A set of [use cases](#) (June-August 2019) which have instrumental in identifying the building blocks of a possible standardized System for Access and Disclosure to be recommended by the EPDP

⁸ *“Contributing to the maintenance of the security, stability, and resiliency of the Domain Name System in accordance with ICANN’s mission through enabling responses to lawful data disclosure requests.”*

- A set of [preliminary policy recommendations](#) (27 August 2019), including [policy principles](#) (discussed in the GAC Webinar on 25 September 2019), and with [building blocks](#) currently being augmented and refined.

Focus: gTLD Registration Data Policy

- Following the ICANN Board [action](#) on the EPDP Phase 1 Recommendations (15 May 2019), the [Temporary Specification on gTLD Registration Data](#) expired on 20 May 2019, and is now replaced by the [Interim Registration Data Policy for gTLDs](#).
- This interim Policy requires **Contracted Parties to continue to implement measures that are consistent with the Temporary Specification**, pending the [implementation](#) of the final Registration Data Policy per EPDP Phase 1 recommendations.
- Work of ICANN org and Community representatives in the [Implementation Review Team](#) (IRT), delivered a [3-stage plan](#) for **the implementation of the final Registration Data Policy**, consistent with the principles set out in EPDP Phase 1 Recommendation 28.
- However, as [reported](#) recently to the GNSO Council (2 October 2019), **the IRT deems the deadline for implementation of 29 February 2020 to be “not feasible”**, due to the large scope of work and complexity, **and is not able to provide any timeline** at this point.
- As a consequence, the **impact of the Temporary Specification on law enforcement investigations**, as noted in section IV.2 of the [GAC Barcelona Communiqué](#) (25 October 2018), **will not be addressed in the short term**. Concerns include:
 - The current Temporary Specification has created a fragmented system for providing access consisting potentially of thousands of distinct policies depending upon the registrar involved
 - Existing requirements in the Temporary Specification governing gTLD Registration Data are failing to meet the needs of the law enforcement and cyber-security investigators (with similar concerns existing for those involved in protecting intellectual property) due to:
 - investigations being delayed or discontinued;
 - users not knowing how to request access for non-public information;
 - and many of those seeking access have been denied access.
- In its [Advice](#) in the ICANN64 [GAC Kobe Communiqué](#) (14 March 2019), the GAC stressed the need for *“swift implementation of the new Registration Directory Services policies as they are developed and agreed, including by sending distinct parts to implementation as and when they are agreed, such as the questions deferred from Phase 1”*.
- In its [response](#) (15 May 2019), the ICANN Board accepted this advice and stated it *“will do what it can, within its authority and remit, and in light of other relevant considerations”*
- In the meantime, the Implementation Review Team (IRT) continues to review and analyze the EPDP Phase 1 recommendations, as well as the related draft language proposed by the ICANN org Implementation Project Team (IPT) to eventually become contractually

enforceable ICANN [Consensus Policy](#). The IRT is expected to [meet](#) twice before and twice during ICANN66.

Focus: ICANN Org Engagement with Data Protection Authorities (DPAs)

- **Between September and November 2018, ICANN reported on its work⁹** with European DPAs seeking legal clarity on a possible unified access model, and its exploration of legal and technical avenues in order to consolidate responsibility for providing access to non-public registration data while establishing a globally scalable unified solution for access to data.
- ICANN reported considering the following avenues:
 - Setting ICANN as the gateway for vetting third party authorised requests to access non-public WHOIS data, which it would in turn request from relevant Registries and Registrars through the new Registration Data Access Protocol (RDAP),
 - Developing a WHOIS Code of Conduct with relevant bodies, in line with Art. 40 GDPR
 - Researching whether existing documentation adopted in the EU regarding the public interest role of the WHOIS meet the requirement of the GDPR for justifying related data processing.
- In relation to these efforts, ICANN had submitted for community comments two iterations of its framing documentation regarding a Unified Access Model: the [Framework Elements for a Unified Access Model](#) (18 June 2018) and subsequent [Draft Framework for a Possible Unified Access Model](#) (20 August 2018). The GAC submitted [Initial Comments](#) (16 October 2018) on the Draft Framework for a Possible Unified Access Model, shortly before the ICANN63 meeting.
- Since the ICANN63 meeting, substantial work was undertaken in the [Technical Study Group \(TSGS\) on Access to Non-Public Registration Data](#) that was [formed](#) on 14 December 2018 to explore a technical solution that would have the ICANN organization serve as the sole entity receiving authorized queries for non-public registration data.
- On 2 May 2019, the TSG [announced](#) having submitted its [Final Technical Model](#) (30 April 2019) to the ICANN CEO, and indicated it would be used in discussions with the European Commission and the European Data Protection Board. ICANN org’s Strawberry Team is working with the European Commission to formulate appropriate input to the European Data Protection Authorities, so as to obtain actionable guidance from the latter with respect to whether a unified access model that consolidates disclosure-related within a centralized system is legally viable.
- On 25 October 2019, the ICANN org CEO [announced](#) that it was now [officially seeking](#) clarity from the European Data Protection Board as to whether a UAM based on the TSG Technical Model would comply with the GDPR, on the basis of a new paper [Exploring a Unified Access Model for gTLD Registration Data](#). The 21-pages paper includes a set of 5 questions on which the ICANN org is seeking clarification (see section 8 “Guidance requested” p. 19).

⁹ This was done through an [ICANN GDPR and Data Protection/Privacy Update blog](#) (24 September 2018), a [presentation](#) by ICANN’s CEO during the EPDP Team Fac-to-Face meeting (25 September 2018), a [Data Protection/Privacy Update Webinar](#) (8 October 2018), a [Status Report](#) to the GAC (8 October 2018) in response to [GAC Advice](#) and a [Data protection/privacy issues: ICANN63 wrap-up and next step blog](#) (8 Nov. 2018).

Current Positions

The current positions of the GAC are listed below in reverse chronological order:

- GAC [Early Input into Phase 2 of the EPDP](#) (19 July 2019) focused on the GAC's understanding of key working definitions of the EPDP
- [GAC Marrakech Communiqué](#) (27 June 2019)
- GAC [letter](#) to the ICANN Board on EPDP Phase 1 Policy Recommendations (24 April 2019), which included the following statements:
 - The GAC has highlighted public policy concerns regarding these recommendations in the [GAC Input on the EPDP Final Report](#) (19 February 2019) and most recently in the [GAC/ALAC Statement on EPDP](#) (13 March 2019). In addition, in the [GAC Barcelona Communiqué](#) (25 October 2019), the GAC specifically took note of the fact that *“existing requirements in the Temporary Specification governing gTLD Registration Data are failing to meet the needs of the law enforcement and cyber-security investigators”*, due in particular to the *“fragmented system for providing access consisting of potentially thousands of distinct policies depending upon the registrar involved”*
 - The GAC deems the EPDP Phase 1 policy recommendations to be a sufficient basis for the ICANN Community and organization to proceed - with all due urgency - to the completion of a comprehensive WHOIS model covering the entirety of the data processing cycle, from collection to disclosure, including accreditation and authentication, which would restore consistent and timely access to non-public registration data for legitimate third party interests, in compliance with the GDPR and other data protection and privacy laws
 - The GAC commits to supporting subsequent developments with appropriate expertise towards the expeditious development and implementation of a comprehensive WHOIS regime, which balances the various legitimate public and private interests at stake, including privacy and accountability, for the foreseeable future.
- GAC [Advice](#) in the ICANN64 [GAC Kobe Communiqué](#) (14 March 2019) focused on ensuring appropriate continuation of work in Phase 2 of the EPDP and implementation of Phase 1 recommendations
- GAC [Input](#) on EPDP Final Report (20 February 2019)
- GAC [Input](#) on EPDP Initial Report (21 December 2018)
- GAC Notes on WHOIS and Data Protection Legislation (Section IV.2) and Follow up on Previous Advice (Section VI.2) in the [ICANN63 Barcelona Communiqué](#) (25 October 2018) and ICANN Board response in its [scorecard](#) (27 January 2019)
- GAC [Initial Comments](#) (16 October 2018) on the Draft Framework for a Possible Unified Access Model that was [published](#) by ICANN on 20 August 2019.
- GAC [Advice](#) in the ICANN62 [GAC Panama Communiqué](#) (28 June 2018)

- GAC [Advice](#) in the ICANN61 [GAC San Juan Communiqué](#) (15 March 2018) was the subject of an informal [consultation](#) between the GAC and the ICANN Board (8 May 2018) which led to the release of the Board's [scorecard](#) (11 May 2018). In response, the GAC [requested](#) that the Board defer taking action on advice it could have rejected (17 May 2018). The ICANN Board released its updated [scorecard](#) (30 May 2018) as part of a formal [resolution](#).
- GAC [Feedback](#) (8 March) on the Proposed Interim Model for GDPR Compliance
- GAC [Comments](#) (29 January 2018) on the proposed interim models for compliance with GDPR including:
 - Highlights of the legal analysis supporting ICANN's goal to maintain the WHOIS to the greatest extent possible
 - Concerns and disagreement with some conclusions of the legal analysis relating to hiding the Registrant email and the need for legal process to support law enforcement requests for non-public Whois data
 - A review of each of the 3 proposed models with recommendations
 - A proposed fourth compliance model calling for: a differentiated treatment of natural and legal person's data; longer data retention periods; the development of an accreditation system for all parties with a legitimate need to access non-public data, including mandatory self-certification arrangements in the interim; a strict application of the model to parties covered within the scope of the GDPR, while others would keep an open Whois
- GAC [Advice](#) in the [ICANN60 Abu Dhabi Communiqué](#) (1 November 2017) accepted per the ICANN Board's [scorecard](#) (4 February 2018) touched on 4 areas including:
 - the continued relevance of the [2007 GAC Whois Principles](#);
 - Accessibility of Whois for recognized users with legitimate purposes;
 - Lawful availability of Whois data for the needs of consumer protection and law enforcement, as well as the public;
 - Involvement of the GAC in the design and implementation of any solution and transparency of ICANN in this process.
- [GAC Principles regarding gTLD WHOIS Services](#) (28 March 2007)

Key Reference Documents

- ICANN org's CEO [correspondence](#) to the EDPB (25 October) seeking clarity as to the compliance of a UAM with the GDPR, as described in a new paper [Exploring a Unified Access Model for gTLD Registration Data](#)
- EPDP Team [Letter to the ICANN Board](#) (10 October 2019) and EPDP Team [Questions to the ICANN Org](#) (23 October 2019) regarding roles and responsibilities of ICANN Org
- [EPDP Phase 2 Draft Preliminary Policy Recommendations](#) (27 August 2019)
- [Technical Model for Access to Non-Public Registration Data](#) (30 April 2019)
- [Interim Registration Data Policy for gTLDs](#) (20 May 2019) replacing the [Temporary Specification on gTLD Registration Data](#) (17 May 2018)
- ICANN Board [Response](#) to the GAC Kobe Communiqué (15 May 2019)
- ICANN Board [Scorecard on EPDP Phase 1 Recommendations](#) (15 May 2019)
- European Commission [public comment](#) (17 April 2019), and subsequent [clarification](#) (3 May 2019) regarding EPDP Phase 1 Recommendations
- EPDP Phase 1 [Final Report](#) (20 February 2019)
- [Letter from the European Data Protection Board](#) (5 July 2018)
- [Statement of the European Data Protection Board on ICANN/WHOIS](#) (27 May 2018)
- [Letter from the Article 29 Working Party](#) (11 April 2018)
- [Letter from the Article 29 Working Party](#) to ICANN (6 December 2017)

Further Information

GAC Reference Page on WHOIS and Data Protection Legislation

<https://gac.icann.org/activity/whois-and-data-protection-legislation>

ICANN Org Reference Page on Data Protection/Privacy Issues

<https://www.icann.org/dataprotectionprivacy>

GNSO Expedited Policy Development Process on Temporary Specification for gTLD Registration Data

<https://gnso.icann.org/en/group-activities/active/gtld-registration-data-epdp>

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GAC Discussion Paper - EPDP on gTLD Registration Data

23 September 2019

Prepared by members of the GAC Small Group on EPDP/GDPR

ICANN | GAC

Governmental Advisory Committee

The purpose of this document is to help GAC Members prepare for discussion during the GAC Webinar on EPDP scheduled for Wednesday 25 September 1300-1500 UTC. Questions on this paper or any related matter for discussion during the webinar may be sent to gac-epdp@icann.org.

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1. Ongoing Policy Development Process: EPDP on gTLD Registration Data

Following the adoption of the [Temporary Policy on gTLD Registration Data](#), the Expedited Policy Development Process (EPDP) was established¹⁰ to develop a replacement for the temporary Policy and define a new ICANN consensus policy framework on WHOIS. The GAC has been represented by 6 participants in this process. They currently are: Olga Cavalli (Argentina), Georgios Tsenlentis (European Commission), Rahul Gossain (India), Chris Lewis-Evans (UK), and Ashley Heineman and Lauren Kapin (US).

Between August 2018 and February 2019, in Phase 1 of its work, the EPDP developed consensus recommendations laying out the foundations of a new policy framework, including topics such as: purposes for processing Data, gTLD Registration Data elements to be collected, those to be redacted and criteria for requests and responses to requests for access to non-public gTLD Registration Data.

This first set of policy recommendations contained in the EPDP Phase 1 [Final Report](#) (20 February 2019), which the GAC deemed “*a sufficient basis [...] to proceed to the completion of a comprehensive WHOIS model*”¹¹, and which for the most part were [adopted](#) by the ICANN Board (15 May 2019)¹², are now subject to implementation discussions and have yet to take effect¹³.

In the meantime the provisions of the Temporary Specification have been incorporated into the [Interim Registration Data Policy for gTLDs](#), pending conclusion of implementation discussions and additional ICANN org work directed by the ICANN Board.

Since May 2019, as part of Phase 2 of its work, the EPDP team has focused on critical and unresolved issues, and as a matter of highest priority: the development of policy recommendations for a System for Standardized Access to Non-Public Registration Data, now referred to as a System for Standardized Access/Disclosure to account for the importance of disclosure decisions and responsibilities involved¹⁴.

There are other issues of importance which the EPDP is expected to continue addressing during Phase 2, as recognized in the Phase 1 Final Report or as requested by the ICANN Board¹⁵, including: Differentiation between registrants on geographic basis (Recommendation 16), Distinguishing publication of gTLD Registration Data for Legal vs. Natural entities (Recommendation 17) and Data Accuracy requirements.

It is expected that a Phase 2 Initial Report will be published before the end of 2019, with a view to issue final policy recommendations after ICANN67, in April 2020. This is consistent with GAC Advice in the [GAC Kobe Communiqué](#) (24 April 2019) which called for “*expeditiously concluding and implementing a carefully scoped and appropriately resourced phase 2 of the EPDP on gTLD Registration Data, within 12 months or less, and with “considerable and demonstrable” progress, if not completion by ICANN66 in Montreal*”. However, it should be understood that the

¹⁰ See the [GNSO’s EPDP Website](#) and the [EPDP Team charter](#) (19 July 2019) for further information on context, objectives and composition of the EPDP Team.

¹¹ See [GAC Response to ICANN Board regarding EPDP Phase 1 Policy Recommendations](#) (24 April 2019)

¹² See in particular the [ICANN Board’s Scorecard: EPDP Phase 1 Recommendations](#) (15 June 2019) which details the Board’s expectations from the implementation phase as well as Phase 2 of the EPDP Work regarding a number of the EPDP Phase 1 policy recommendations. It should be noted that the ICANN Board did not accept one specific recommendation (Recommendation 1 Purpose 2), consistent with input received from European Commission in [comments](#) (17 April 2019) and follow-up [letter](#) (3 May 2019).

¹³ The [Interim Registration Data Policy for gTLDs](#) which replaced the Temporary Specification on 20 May 2019 details a phased implementation with targeted effective date of the Final Policy by 29 February 2020. However, as noted by the ICANN Board upon its adoption of EPDP Phase 1 Policy Recommendation 28: “*there is a possibility that this date may not be met.*”

¹⁴ Consistent with Recommendation #3 of the EPDP Phase 1 [Final Report](#)

¹⁵ See the [ICANN Board’s Scorecard: EPDP Phase 1 Recommendations](#) (15 June 2019)

EPDP policy recommendations are likely to consist of high level assumptions, principles and guidelines which will require substantial implementation work before any centralized or standardized system may be put in place. This implementation process, itself, may generate discussions and debates about particular approaches to access and disclosure.

Consequently, it is likely that a model for Unified Access to Non-Public gTLD Registration Data may not become a reality before a substantial timeframe of implementation, that is developing and rolling out new systems, negotiating contracts between ICANN and contracted parties, ICANN and technical suppliers, etc.

2. Policy Discussions in EPDP Phase 2: Overview

In the second phase of its work, the EPDP set out to address policy questions related to three main areas in relation to a System for Standardized Access/Disclosure:

- Purposes for accessing data: legitimate purposes, legal bases, scope of data elements to be disclosed, etc.
- Credentialing into such a system: how would legitimate user groups be accredited and authenticated
- Terms of access to and use of registration data, including appropriate accountability mechanisms.

After attempts at tackling these interdependent topics from various perspectives, the EPDP made most progress by considering a [set of concrete use cases](#) discussing for each real world scenario: who would be legitimate requestors for non-public data, what data elements would be disclosed, what the purpose would be for requesting the data, under what legal bases both requests and disclosures of the data would be made, and what safeguards would need to be put in place regarding both access and use of the data. It is also important to note that these use cases were for illustrative / discussion purposes and were not intended to be operational documents to be used for any other purpose.

The discussion of these use cases enabled the EPDP Support team to derive preliminary policy recommendations¹⁶ which are now being debated and further developed in the weekly EPDP Team meetings. This section provides an overview of the policy principles envisioned in these preliminary recommendations.

In the context of these policy discussions, it is important to understand the impact of overarching principles of data protection law on a potential System for Standardize Access/Disclosure, and in particular the roles and responsibilities of parties in disclosing personal data, as well as the necessity to implement safeguards in association with disclosures of personal data. These two topics are discussed further below.

Roles and Responsibilities in disclosing non-public data

The EPDP has spent a great deal of time around policy issues surrounding roles and responsibilities associated with access/disclosure of redacted WHOIS information and the corollary legal liability risks. Under GDPR, roles and responsibilities associated with every step of data processing must be identified.

At a high level, for illustrative purposes, for any access and disclosure model there will be the responsibility to collect, transfer, and disclose domain name registration data. With each of these responsibilities comes legal liability risk. ICANN's contracted parties are very concerned about shouldering all the risk (the fines that can be levied if a company is found to be in noncompliance with GDPR).

¹⁶ See the [Preliminary Recommendations Draft For Discussion](#) and associated [Diagram](#) (27 August 2019) shared in advance of the recent [Face-to-Face meeting of the EPDP](#) (9-11 September 2019)

Therefore, the EPDP has and continues to work to find ways to limit these risks. ICANN, similarly, is working in parallel with the EPDP to identify questions for posing to European Data Protection Authorities in an effort to get assurances or guidance on what is legally possible in terms of spreading out liability so that contracted parties don't find themselves overly burdened and/or otherwise discouraged from participating in an access/disclosure model.

Registrant safeguards in association with disclosure of personal data

From a public policy perspective, in addition to ensuring legitimate access to non-public gTLD Registration data, the GAC has recognized the importance of appropriate personal data protection. For instance, per Data Protection Law principles, domain name registrants should have the right:

- to obtain, upon request, confirmation of the processing of personal data relating to them and the communication in an intelligible form of the data processed
- to obtain, upon request, rectification or erasure, as the case may be, of inaccurate data or data that is being, or has been, processed contrary to the provisions of the agreed policy governing the WHOIS protocol
- not to be subject to a decision significantly affecting them based solely on an automated processing of data unless this is authorised by law providing appropriate safeguards, including at least the right to obtain human intervention
- to lodge a complaint with the supervisory authority, when they consider that their data protection rights have been violated
- to an effective remedy before an independent and impartial tribunal when they consider that their data protection rights have been violated

The discussion of such safeguards in the EPDP have manifested in particular in the attention given to who and under what circumstances should non-public registration data be disclosed. A considerable amount of time was spent discussing the allowable bases for requesting and disclosing personal data under the GDPR, per Article 6(1) on Lawfulness of Processing.

Further, given the likely need for a System for Standardized Access/Disclosure to rely on the legal basis provided by GDPR Art. 6(1)(f) to justify disclosures of non-public registration data by the data controller to a majority of third party requests, the EPDP is debating responsibility, standardization and automation of the necessary balancing of interests of the controller(s), requestor(s) and data subject(s), considering that there is no exhaustive list of what should be taken into account when conducting such a balancing test. At a minimum such tests should consider:

- the nature of the personal data being processed;
- the reasonable expectations of the data subject; and
- the likely impact of the processing on the data subject and whether any safeguards can be put in place to mitigate negative impacts.

3. Policy Discussions in EPDP Phase 2: Focus on Specific Issues

In this section of the Discussion Paper, the GAC Small Group on EPDP/GDPR would like to bring to GAC Members' attention two policy issues of particular importance to governments and public policy: accreditation into a system for requests and disclosure of non-public gTLD Registration data, and accuracy of gTLD Registration Data.

Accreditation into a Standardized System for Access/Disclosure of non-public gTLD Registration data

As anticipated in the [GAC Early Input into EPDP Phase 2](#) (19 July 2019), deliberation on the topic of 'accreditation' requires clarity on definition of terms as well as a clear distribution of functions and roles among parties and

components involved in such a system. To date, the lack of clarity on these matters may have prevented substantial progress in related EPDP deliberations.

In the GAC Early Input, accreditation is addressed as follows:

“the GAC views this as a critical component to an access/disclosure model whereby parties linked by common cause can be “accredited” by a known and eligible/recognized third party. The accreditation provider would be responsible for managing and policing the groups of entities/individuals it accredits for purposes of providing rigor and accountability on the requestor side of the house. By no means does the GAC equate accreditation with automatic or assumed access to disclosed information”

More recently, the GAC Small Group has identified 3 key functions to be achieved in an accreditation model:

- **Identification:** determining which legitimate entities should be given credentials
- **Credentialing:** supplying credentials to the identified entities
- **Authentication:** verifying credentials to ensure entities are who they purport to be

These conceptual distinctions should ultimately help the EPDP Team determine which are in scope of policy recommendations and which are to be left for third parties interested in accessing non-public data to determine. In fact, the EPDP preliminary recommendations already recognize that *“user groups interested in accreditation should self-organize and develop a proposed accreditation mechanism that is shared with the European Data Protection Board for review”*.

In this context, the GAC and its Members, as representatives of public authorities requiring access to non-public gTLD Registration Data for legitimate purposes, and concerned with the ability of cybersecurity and Intellectual Property actors to continue fulfilling their public interest objectives, may need to discuss appropriate roles for national authorities, potential relevant international bodies and their interactions with a Standardized System for Access and Disclosure.

Accuracy of gTLD Registration Data

Discussions in the EPDP have highlighted the desire of stakeholders to circumscribe the issue of ‘Data Accuracy’ as a right of data subjects in Data Protection Law, therefore limiting the corresponding obligations of parties responsible for processing gTLD registration data to enabling registrants to exercise their associated rights. This is illustrated by recommendation #4 of the EPDP Phase 1 Final Report in which *“The EPDP Team recommends that requirements related to the accuracy of registration data under the current ICANN contracts and consensus policies shall not be affected by this policy”*.

However, considering the importance of the accuracy of registration data for the legitimate purposes which the WHOIS has traditionally served (per the [GAC Whois Principles Regarding gTLD WHOIS Services](#), 28 March 2007), GAC representatives on the EPDP have consistently argued that ‘Data Accuracy’ in the context of EPDP policy discussions must be understood more broadly, including as an obligation on relevant data controllers by virtue of the legitimate purposes for which gTLD Registration Data is processed.

This is why a caveat was associated with the EPDP Phase 1 recommendation that *“The topic of accuracy as related to GDPR compliance is expected to be considered further as well as the WHOIS Accuracy Reporting System”*, including in consideration of specific legal analysis¹⁷ that was provided to the EPDP on this topic.

¹⁷ See Bird & Bird memorandum [Advice on the meaning of the accuracy principle pursuant to the General Data Protection Regulation](#) (9 February 2018)

Indeed, the GDPR recognizes accuracy of personal data as one of the general principles of the protection of personal data. Article 5 GDPR provides that personal data shall be “*accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay*”. Therefore, for WHOIS personal data, the importance of the data’s accuracy should be determined in relation to the purpose for which it is being processed: reasonable steps should be taken to ensure data accuracy so that the purpose can be still served. Primarily this includes the purpose for which the WHOIS data is collected, but could possibly also encompass any further legitimate purposes for which the data may subsequently be processed.

Regarding the interdependency between EPDP policy discussion and ICANN’s [WHOIS Accuracy Reporting System](#), it should be noted that the ICANN Org reported in a [letter](#) to the GNSO Council (21 June 2019) that “*The last report was issued in June 2018 using data collected in January 2018, prior to adoption of the Temporary Specification; however, since the adoption of the Temporary Specification in May 2018, ICANN org has not published further ARS reports*” and that it is seeking “*the GNSO Council’s clarification on whether the Phase 2 EPDP Team will be considering the subject of data accuracy, including projects that utilize gTLD registration data, such as WHOIS ARS.*” This has not been clarified yet.

4. For Further Reference

Most Recent Documentation

- [Temporary Policy on gTLD Registration Data](#) (17 May 2018)
- [ICANN Board Resolution](#) on EPDP Phase 1 Policy Recommendations (15 May 2019)
- [ICANN Board Scorecard on EPDP Phase 1 Recommendations](#) (15 May 2019)
- [Interim Registration Data Policy for gTLDs](#) (20 May 2019)
- [GAC Early Input into Phase 2 of the EPDP](#) (19 July 2019)
- [EPDP Phase 2 Draft Preliminary Policy Recommendations](#) (27 August 2019)

General Resources

- GNSO EPDP webpage: <https://gns0.icann.org/en/group-activities/active/gtld-registration-data-epdp>
- EPDP Team wiki: <https://community.icann.org/display/EOTSFGRD>
- ICANN Data Protection and Privacy Issues webpage: <https://www.icann.org/dataprotectionprivacy>

Appendix - Background

1. Background on WHOIS and Data Protection Law

Over the past decades, information pertaining to the individuals or entities holding a domain name (domain registration data) made available publicly through the WHOIS protocol and related WHOIS services¹⁸, has grown to become an indispensable tool for attributing content, services and crime on the Internet. Consequently, WHOIS has been the subject of long-standing attention for the ICANN Community, including the GAC, particularly in relation to challenging issues such as concerns about the lack of protection of personal data, and the inaccuracy of registration data.

Defining the right approach to WHOIS - now known as Registration Data Services (RDS) - requires taking into account the important issues of data protection and the legitimate and lawful practices associated with protecting the public, including to combat illegal conduct such as cybercrimes, fraud and infringement of intellectual property, to ensure cyber-security, promoting user confidence and consumer trust in the Internet, and protecting consumers and businesses. Prior GAC Advice¹⁹ and the ICANN Bylaws recognize these vital interests.

While various new data protection legal frameworks have emerged or will emerge across the world, the entry into force of the EU General Data Protection Regulation (GDPR) on 25 May 2018 spurred the ICANN Organization, Contracted Parties and the ICANN Community to bring WHOIS into compliance with applicable law.

2. Temporary Specification on gTLD Registration Data: Interim GDPR Compliance

Since ICANN58 in March 2017, the ICANN Community has debated the ways in which WHOIS needed to be brought into compliance with GDPR.

In this process, the GAC set forth public policy concerns in its Advice to the ICANN Board²⁰, as well as in various contributions from the GAC²¹ and some of its members²². Data Protection Authorities have also provided guidance to ICANN²³, which has sought and published legal advice it received from an external law firm²⁴.

On 17 May 2018, in preparation for the entry into force of the GDPR, the ICANN Board adopted an emergency²⁵ [Temporary Policy on gTLD Registration Data](#) which aimed to allow ICANN and gTLD registry operators and registrars

¹⁸ See ICANN's [WHOIS High-Level Technical Brief](#) (20 April 2018)

¹⁹ See in particular the [GAC Whois Principles Regarding gTLD WHOIS Services](#) (28 March 2007)

²⁰ See [GAC Abu Dhabi Communiqué](#) (1 November 2017), [GAC San Juan Communiqué](#) (15 March 2018), [GAC Panama Communiqué](#) (28 June 2018) and [GAC Kobe Communiqué](#) (14 March 2019)

²¹ See GAC contributions to community discussions outside of policy development processes, in the form of [Clarifying Questions](#) to ICANN following GDPR Announcements (17 December 2017), [Comments](#) on the proposed interim models for compliance with GDPR (29 January 2018), [Feedback](#) on the Proposed Interim Model for GDPR Compliance (8 March 2018) and [Initial Comments](#) on the Draft Framework for a Possible Unified Access Model (16 October 2018)

²² See contributions from the Council of Europe's [Bureau of the Convention 108](#) (23 January 2018) and [Secretariat of the Cybercrime Convention Committee](#) (25 January 2018), [Europol EC3 Advisory Group on Internet Security](#) (26 January 2018), [European Commission](#) (29 January 2018), the [UK National Crime Agency](#) (29 January 2018), [United States Government](#) (28 January 2018), [WIPO Arbitration and Mediation Center](#) (29 January 2018), [European Commission](#) (7 February 2018), [Europol EC3 Advisory Group on Internet Security](#) (10 April 2018) and [United States Government](#) (20 April 2018)

²³ See [statement from the Dutch DPA](#) (26 October 2017), [Letter from the Article 29 Working Party](#) (6 December 2017), [Working Paper adopted by the Berlin Group](#) (28 November 2017), [Letter from the Article 29 Working Party](#) (11 April 2018), [Statement of the European Data Protection Board on ICANN/WHOIS](#) (27 May 2018), [Letter from the European Data Protection Board](#) (5 July 2018), Letters from the Belgian DPA on [16 July 2018](#), [26 September 2018](#) and [15 January 2019](#).

²⁴ See GDPR Legal Analysis Memoranda by the European law firm Hamilton Advokatbyrå: [Part 1](#) (16 October 2017), [Part 2](#) (15 December 2017) and [Part 3](#) (21 December 2017).

²⁵ See the ICANN Board's [Advisory Statement](#) (17 May 2018) providing a detailed rationale for use of an extraordinary provision in Registry and Registrar Agreements.

to comply with GDPR while continuing to adhere to existing ICANN contractual requirements and community-developed policies, and maintaining the existing WHOIS system to the greatest extent possible.

This policy specified a redaction of most gTLD domain name registrants' personal data collected by Registries and Registrars in the output of their WHOIS services, virtually on a global basis and without requiring that a differentiation be made between registrations of legal and natural persons. Access to non-public data by legitimate parties was addressed in the Temporary Policy as a requirement for Registries and Registrars to provide "reasonable access [...] except where such interests are overridden by the interests or fundamental rights and freedoms of the Registered Name Holder or data subject pursuant to Article 6(1)(f) GDPR"²⁶. The Temporary Specification did not provide guidance on what constitutes "reasonable access" and hence created a situation where each contracted party could determine for itself what was permissible hence creating a risk of many distinct and possibly conflicting standards.

3. Importance of a Unified Access to Non-Public gTLD Registration Data

As a consequence of the ICANN Board's emergency decision, and as highlighted in the [GAC Barcelona Communiqué](#) (25 October 2018), the "Temporary Specification has created a fragmented system for providing access consisting of potentially thousands of distinct policies depending upon the registrar involved. This lack of consistent policies to access non-public information causes delays. If investigations are delayed or stopped, the potentially injurious conduct continues to harm the public with negative results that include physical and financial harm. Hence, time is of the essence for implementation of a final specification governing gTLD directory services and developing a unified access model for third-party access to non-public WHOIS data. Existing requirements in the Temporary Specification governing gTLD Registration Data are failing to meet the needs of the law enforcement and cyber-security investigators.[...] Similar concerns exist for those involved in protecting intellectual property."

In practice, until the Temporary Specification was adopted on 17 May 2018, various civil and criminal law enforcement agencies, government entities, cybersecurity researchers and intellectual property interests worldwide have relied on the real time public WHOIS databases, on a daily basis, as a key investigative tool. To illustrate the importance of this tool to their work, in many instances, Law Enforcement Agencies (LEA) reported WHOIS lookup rates above 10,000 per month in a survey conducted by the RDS/WHOIS2 Review Team²⁷.

Before May 2018, 98% of surveyed LEAs indicated that WHOIS met their investigative needs, either partially or fully. In June 2018, after adoption of the Temporary Specification, this rate dropped to 33%.

A survey of cybersecurity researchers²⁸ indicated that since the adoption of the Temporary Specification, investigations have been affected for 90% of them. Close to 50% of cybersecurity researchers declared not knowing how to request non-public WHOIS data; more than 75% percent reported being denied such access upon request; and when granted access, those parties reported this took more than 24 hours in 92% of cases, and more than 7 days in more than 25% of cases.

This is why, in anticipation of such impacts, the GAC has consistently sought since March 2017, in its contributions to ICANN Community debates and in relevant GAC Advice the ICANN Board:

- a system be created "that continues to facilitate the legitimate activities recognized in the [[2007 GAC Principles on WHOIS](#)], including by: Keeping WHOIS quickly accessible for security and stability purposes, for consumer protection and law enforcement investigations, and for crime prevention efforts, through

²⁶ See Section 4. Access to Non-Public Registration Data in [Appendix A](#) of the [Temporary Specification for gTLD Registration Data](#)

²⁷ See Section 5.3.1 in the [Draft Report](#) of the Registration Directory Services 2 Review Team (31 August 2018)

²⁸ See [Joint Survey](#) from the Anti-Phishing and Messaging Malware and Mobile Anti-Abuse Working Groups (18 October 2018)

user-friendly and easy access to comprehensive information to facilitate timely action; and Keeping WHOIS quickly accessible to the public (including businesses and other organizations) for legitimate purposes, including to combat fraud and deceptive conduct, to combat infringement and misuse of intellectual property, and to engage in due diligence for online transactions and communications” ([GAC Abu Dhabi Communiqué](#), 1 November 2017)

- *“Continued access to the WHOIS, including non-public data, for users with a legitimate purpose, until the time when the interim WHOIS model is fully operational, on a mandatory basis for all contracted parties”* ([GAC San Juan Communiqué](#), 15 March 2018)
- *“a Unified Access Model would be developed to meet the needs of all legitimate third parties, while ensuring compliance with relevant data protection law”* ([GAC Panama Communiqué](#), 28 June 2018)

Additionally, in their letters to the ICANN Organization, the Article 29 Data Protection Working Party and the European Data Protection Board have recognized that *“enforcement authorities entitled by law should have access to personal data in the Whois directories”* and stated their expectation that ICANN should *“develop a WHOIS model that will enable legitimate uses by relevant stakeholders, such as law enforcement.”*²⁹

In the context of ICANN’s multi-stakeholder model, the above GAC public policy advice, Data Protection Authorities guidance and various expert legal advice³⁰, have been met with conflicting private interests, including those of contracted parties, concerned with liability risks in collecting and disclosing personal data, and those of civil society stakeholders, concerned with misuse of personal data disclosures. .

With intention to facilitate further discussion with the ICANN Community and Data Protection Authorities, In this context, and in complement to the bottom-up policy development process in the EPDP initiated as a consequence of the emergency measures decided by the ICANN Board, the ICANN org has explored parameters of a possible unified access model³¹ to possibly reduce or shift liability risks for contracted parties through the centralization of certain data processing required to enable third party access to non public data (including accreditation, authentication and disclosure of registration data). In support of this objective, a [technical model](#) (30 April 2019) was designed by a [Technical Study Group](#), showing the viability of such an approach, which the ICANN org is seeking to confirm with Data Protection Authorities. It is expected that the outcome of this ongoing engagement with European authorities would inform the outcome of the policy development associated with an access and disclosure model being conducted in the meantime.

²⁹ See [Letter from the Article 29 Working Party](#) (6 December 2017) and [Letter from the European Data Protection Board](#) (5 July 2018)

³⁰ See footnote 7 for legal advice by the Hamilton Advokatbyrå law firm between October and December 2017, and see new legal advice by the Bird & Bird law firm in support of the work of the EPDP during its [Phase 1](#) (August 2018 - February 2019) and [Phase 2](#) (since May 2019):

³¹ See [Draft Framework for a Possible Unified Access Model for Continued Access to Full WHOIS Data](#) (20 August 2018)

Appendix - Preliminary EPDP Policy Principles

The principles listed below are extracted from the Preliminary EPDP Policy Recommendations regarding a System for Standardized Access/Disclosure of gTLD Registration Data (SSAD), as of 18 September 2019. Emphasis added by the GAC Small Group below is meant to highlight the most substantive and impactful principles.

- Policy Principle #1.** **The objective of the SSAD is to provide a predictable, transparent and accountable mechanism for access/disclosure of non-public registration data to third parties with a legitimate interest and a legal basis.**
- Policy Principle #2. Compliance with GDPR and other applicable data protection legislations underpins the SSAD.
- Policy Principle #3. The mechanism chosen to ultimately implement the SSAD must have the ability to adhere to these policy principles and recommendations.
- Policy Principle #4. Requestors must comply with the requirements outlined in the policy recommendations when submitting disclosure / access requests.
- Policy Principle #5. Requests must be justifiably necessary and proportionate to the legitimate interest identified in the request for disclosure. In addition, the non-public data elements requested should not be readily available through other means.
- Policy Principle #6. Contracted parties must comply with the requirements outlined in the policy recommendations when receiving disclosure / access requests.
- Policy Principle #7.** **Automated processing of SSAD requests is desirable, but only where it has been established that doing so does not negatively affect the rights of the data subject. Automation does not imply automatic disclosure / access.**
- Policy Principle #8. If user groups are created, being identified as part of a particular user group does not create an automatic right of disclosure or access to certain data elements (see also policy principle #6).
- Policy Principle #9.** **Each processing activity in the context of access/disclosure requires its own lawful basis, as outlined in the GDPR. Specifically, a requestor of registration data must have a lawful basis for both its receipt and any subsequent processing of the data. Separately, the controller must have a lawful basis for disclosing registration data to the requestor. The EPDP Team's work will focus on the lawful basis of the entity disclosing the data's disclosure, although it is not within the EPDP Team's remit nor expertise to conclusively determine which lawful basis may apply – this will remain the responsibility of the entity disclosing the data. The requestor will be responsible for identifying its lawful bases; those determinations are not within the remit of the EPDP Team.**
- Policy Principle #10.** **The entity disclosing the data will remain ultimately responsible for assessing whether any disclosure or non-disclosure is in violation of any applicable laws.**
- Policy Principle #11. Contracted parties are only responsible for disclosing non-public registration data for the domain names under their management.
- Policy Principle #12.** **In order to facilitate implementation of the policy recommendations, requestors may be categorized, and these categories may be used to organize certain processes as described in the policy recommendations (e.g. accreditation, authentication)**