ICANN | GAC
Governmental Advisory Committee

ICANN 67
COMMUNITY FORUM
7–12 March 2020

WHOIS and Data Protection Policy

Session 5

Contents

Session Objective

Discuss developments since ICANN66 and Next Steps for the GAC, in relation to both future policy and interim arrangements for effective access to non-public gTLD Registration Data. consistent with the Public Interest and in compliance with Data Protection Laws

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 services[1], 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 Advice[2] 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 interest[3].

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[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 (23 September 2019)

Leadership Proposal for GAC Action during ICANN67

1. **Consider the proposed access model for access to non-public gTLD registration data** as laid out in the EPDP Phase 2 Initial Report, as summarized by the GAC Small Group (see Annex to this Briefing), and **advocate for maximum automation of disclosure** to law enforcement and other legitimate public authorities, where legally permissible.

2. **Consider** a proposed GAC Comment on the EPDP Phase 2 Initial Report expected to be circulated by the GAC Small Group prior to ICANN67, for submission by 23 March 2020.

3. **Discuss GAC expectations regarding the timely deployment and operation** of a Standardized System for Access and Disclosure to gTLD Registration Data (SSAD)

    a. GAC Members may wish to consider **how the GAC Accreditation Principles together with the EPDP-proposed Standardized System for Access and Disclosure** (SSAD), of which they are an integral part, **would translate at the country/territory level** into organization of accreditation and access for its users from identified public authorities

    b. GAC Members may also 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 and ICANN66 Minutes, section 2.1)

4. In the meantime, **ensure that interim arrangements for access to non-public data are effective,** consistent with Advice in the GAC Montréal Communiqué (6 November 2019). The ICANN Board recently responded to this advice (26 January 2020).

Relevant Developments

Overview of Current Status

- **The current interim policy regime applicable to gTLD Registration Data is expected to remain in place for the foreseeable future**. Following previous GAC input to the ICANN Board (24 April 2019), the GAC had advised in the Montréal Communiqué (6 November 2019) that effectiveness of the interim arrangement need be improved.

    - On 15 May 2019, **the ICANN Board** took action (detailed in a scorecard) on the EPDP Phase 1 Recommendations which laid the foundation for the future policy regime regarding gTLD Registration Data.

    - On 20 May 2019, the Temporary Specification on gTLD Registration Data expired and was replaced by the Interim Registration Data Policy for gTLDs, which requires **Contracted Parties to continue to implement measures that are consistent with the Temporary Specification**, pending the implementation of the final Registration Data Policy once implementation of the EPDP Phase 1 recommendations is complete. The GAC advised in the Montréal Communiqué (6 November 2019) the ICANN Board that a "*detailed work plan identifying an updated realistic schedule*" to completion be provided.

- **Policy Development in Phase 2 of the EPDP has made notable progress after ICANN66,** as reflected in its Initial Report (7 February 2020), to be assessed against GAC expectations in the Kobe Communiqué Advice (14 March 2019)

    - The Belgian Data Protection Authority response (4 December 2019) to ICANN's request for guidance from the European Data Protection Board (25 October 2019) on the basis of a paper Exploring a Unified Access Model for gTLD Registration Data.

    - While the meaning of this latest input from European DPAs remains a matter of debate within the EPDP Team, the letter led stakeholders to recommend a compromise Standardized System for Access and Disclosure (SSAD) for non-public gTLD registration data, mixing some level of centralization (favored by third parties, including public authorities) and some level of decentralization (favored by contracted parties and privacy advocates), with the ability to centralize and automate further through an improvement process.

- **GAC Input has been instrumental in ensuring progress** towards the development of a unified access to non-public gTLD registration data

    - The GAC Accreditation Principles as endorsed by the GAC (21 January 2020) have been incorporated into the EPDP Phase 2 Initial Report as Recommendation #2

    - GAC EPDP Representatives have been instrumental in securing centralization, swift response and in some cases automatic disclosure to public authoritie's requests

    - **Several critical issues remain open**, including unresolved GAC Advice in the San Juan Communiqué, and Kobé Communiqué, on which the EPDP Team is expected to further deliberate in the coming months (See annex to the briefing for details).

Focus: Interim 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 wich 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.

- ICANN org and Community representatives in the Implementation Review Team (IRT), who are drafting language to eventually become contractually-enforceable ICANN Consensus Policy, 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 to the GNSO Council (2 October 2019), **the IRT deemed 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) and referenced in GAC input to the ICANN Board (24 April 2019), **will not be addressed in the short term**. Concerns include:
  - The Temporary Specification has fragmented access to registration data, now ruled by thousands of distinct policies depending upon the registrar involved
  - Existing requirements in the Temporary Specification 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 its Advice in the ICANN66 GAC Montréal Communiqué (6 November 2019), the GAC advised the ICANN Board to: "*take all possible steps to ensure that the ICANN org and the EPDP Phase 1 Implementation Review team generate a detailed work plan identifying an updated realistic schedule to complete its work and provide and inform the GAC on the status of its progress by January 3, 2020;*"

Focus: Ongoing Policy Development in the EPDP on gTLD Registration Data

- Since 2 May 2019, **the EPDP Team has entered Phase 2 of its deliberations** with a new Chair, Janis Karklins, current Latvian Ambassador to the UN in Geneva and former GAC Chair, and a current GAC representation as follows:

3 "Members" of the EPDP Team:	3 "Alternates":
Laureen Kapin (US) Chris Lewis-Evans (UK) Georgios Tsenlentis (European Commission)	Ryan Carroll (US) Olga Cavalli (Argentina) Rahul Gossain (India)

- The scope of work[4] in Phase 2 includes 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)**, as well as addressing so-called "Priority 2" Items or **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.

- Originally the EPDP Team had been working towards a Phase 2 Initial Report by ICANN66 and the Final Report by ICANN67. However, under the latests planning assumptions the **EPDP Team targets the delivery of its final policy recommendations in June 2020**, prior to the ICANN68 meeting. As highlighted during the GAC Webinar on EPDP (25 September 2019) and its associated Discussion Paper: "*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*".

- As described in the GAC Summary of the EPDP Phase 2 Initial Report (see Annex to this briefing) the **key proposals regarding a System for Standardized Access/Disclosure of Non-Public Registration Data (SSAD)** are :
    - Centralization of requests and decentralization of responses, with continuous evolution of the model, towards increasing automation and standardization
    - Establishing a mechanism to advise ICANN Org and Contracted parties on evolution and continuous improvement of the SSAD
    - Automation of disclosure in response to some public authorities' requests
    - Need to meet applicable Data Protection Laws worldwide, not just GDPR

- **The EPDP is now expecting** public comments on its Phase 2 Initial Report by 23 March 2020, and it is expected to continue tackling "Priority 2" Items and open Issues in the coming months.

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

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

- **Between September and November 2018, ICANN reported on its work[5]** 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.

- 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).

- Between November 2018 and May 2019, work was undertaken in the [Technical Study Group (TSGS) on Access to Non-Public Registration Data](#) 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.

- 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 (section 8 p. 19) which the GAC [discussed](#) these in plenary during ICANN66 (3 November 2019).

- On 4 December 2019, in its [response](#) to the ICANN CEO, **the Belgian DPA encouraged ICANN to continue its efforts to design a comprehensive system for access** control that takes into account the requirements of security, data minimization, and accountability. The response did not provide any definitive opinions regarding the questions that ICANN org included in the paper. The letter states that the policy and relevant safeguards that the community will develop to be applied in a UAM will be extremely important to assess whether a centralized model increases or decreases the level of protection enjoyed by natural persons. With respect to the roles and responsibilities, the letter states that parties to a processing activity cannot simply designate which party should be deemed to act as a controller or joint controller; a factual case-by-case is needed to that end. A previous [communication](#) by the Article 29 Working Party is further referenced, which contained the statement that, "At first glance it would seem that…ICANN and the registries are joint controllers".

- **A follow-up meeting between ICANN org and the Belgian DPA is expected** prior to ICANN67.

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[5] 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

- [GAC Accreditation Principles](#) (21 January 2020) now incorporated into the EPDP Phase 2 Initial Report

- [GAC Comments](#) (23 December 2019) on the RDS-WHOIS2 Review Recommendations

- GAC [Advice](#) in the ICANN66 [Montréal Communiqué](#) (6 November 2019) regarding the EPDP Phase 1 Implementation timeline and the interim requirement for "reasonable access" to non-public gTLD Registration Data. [Follow on previous GAC Advice](#) was also provided regarding implementation of the Privacy Proxy Services Accreditation policy.

- 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) recalling the [GAC Kobé Communiqué](#) Advice

- GAC [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 in which the GAC deemed the EPDP Phase 1 policy recommendations to be a sufficient basis for the ICANN Community and organization to proceed, and highlighted public policy concerns, including "*existing requirements in the Temporary Specification governing gTLD Registration Data [...] failing to meet the needs of the law enforcement and cyber-security*"

- GAC [Advice](#) in the ICANN64 [GAC Kobe Communiqué](#) (14 March 2019) focused on ensuring appropriate continuation of work in EPDP Phase 2 and implementation of Phase 1 policy.

- [GAC/ALAC Statement on EPDP](#) (13 March 2019)

- GAC [Input](#) on EPDP Phase 1 Final Report (20 February 2019)

- GAC [Input](#) on EPDP Phase 1 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 2018) on the Proposed Interim Model for GDPR Compliance

- GAC [Comments](#) (29 January 2018) on the interim models for compliance with GDPR

- GAC [Advice](#) in the [ICANN60 Abu Dhabi Communiqué](#) (1 November 2017) accepted per the ICANN Board's [scorecard](#) (4 February 2018)

- [GAC Principles regarding gTLD WHOIS Services](#) (28 March 2007)

Key Reference Documents

- GAC Documentation
  - [GAC Summary of EPDP Phase 2 Initial Report](#) (7 February 2020)
  - [GAC Webinar Discussion Paper on EPDP on gTLD Registration Data](#) (23 Sept. 2019)

- Government Positions
  - European Commission [public comment](#) (17 April 2019), and subsequent [clarification](#) (3 May 2019) regarding EPDP Phase 1 Recommendations
  - US Department of Commerce Assistant Secretary for Communication and Information [letter](#) (4 April 2019) and [response](#) by the ICANN CEO (22 April 2019)

- Data Protection Authorities Correspondence
  - [Letter from the Belgian DPA](#) (4 December 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)

- Current Policy and Output on Ongoing Policy Development
  - [Interim Registration Data Policy for gTLDs](#) (20 May 2019) replacing the [Temporary Specification on gTLD Registration Data](#) (17 May 2018)
  - EPDP Phase 2 [Initial Report](#) (7 February 2020)
  - EPDP Phase 1 [Final Report](#) (20 February 2019)

- ICANN Board Resolutions
  - ICANN Board [Scorecard on EPDP Phase 1 Recommendations](#) (15 May 2019)
  - ICANN Board [resolution](#) (17 May 2018) adopting the [Temporary Specification](#)

- ICANN Org and Technical Study Group Input
  - [Exploring a Unified Access Model for gTLD Registration Data](#) (25 October 2019), a paper which served as a basis for ICANN org's seeking clarity from the EDPB as to the compliance of a UAM with the GDPR
  - [Technical Model for Access to Non-Public Registration Data](#) (30 April 2019)

- Legal Advice provided by Bird & Bird to the EPDP Team during [Phase 1](#) and [Phase 2](#)
  - [Notice to technical contacts](#) (22 January 2019)
  - [Interpretation of GDPR Article 6(1)(b)](#) (23 January 2019)
  - [Liability in connection with a registrant's self-identification as a natural or non-natural person](#) (25 January 2019)
  - [Meaning of the accuracy principle pursuant to the GDPR](#) (8 February 2019)

- Application of the GDPR to ICANN (7 February 2019)

- Inclusion of "city" in publicly available Whois data (13 February 2019)

- Legal Basis for transferring Thick WHOIS (8 March 2019)

- Liability, Safeguards, Controller & Processor (9 September 2019)

- Lawful basis for disclosure to law enforcement authorities outside the controller's jurisdiction (9 September 2019)

- Legitimate interests and automated submissions and/or disclosures (10 September 2019)

- Questions regarding a System for Standardized Access/Disclosure ("SSAD"), Privacy/Proxy and Pseudonymized Emails (4 February 2020)

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 Summary of the EPDP Phase 2 Initial Report
7 February 2020 (Updated 17 February)
Prepared by the GAC Small Group on EPDP/GDPR

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> *The purpose of this document is to assist GAC Members in considering progress in Phase 2 of the Expedited Policy Development Process (EPDP) on gTLD Registration Data. as reflected in its [Initial Report](#) which was just released. This report is available for [Public Comment](#) until 23 March 2020.*
>
> *Questions on this paper or any related matter may be sent to [gac-epdp@icann.org](#).*

Contents

I. Introduction

The EPDP Team has made notable progress following receipt of a [letter](#) from the Belgian Data Protection Authority (4 December 2019). The Belgian DPA sent the letter in response to ICANN's [request](#) for guidance from the European Data Protection Board (25 October 2019) which the GAC [discussed](#) in plenary during ICANN66 (3 November 2019).

While the meaning of this latest correspondence from European Data Protection Authorities remains a matter of debate within the EPDP Team, the 4 December 2019 letter ultimately led stakeholders to focus on recommending a compromise access and disclosure model for non-public gTLD registration data, mixing some level of centralization (favored by third parties, including public authorities) and some level of decentralization (favored by contracted parties and privacy advocates), with the ability to centralize and automate further through an improvement process.

This document provides a summary of deliberations to date, as reflected in the [EPDP Phase 2 Initial Report](#), including:

- An overview of key aspects of the proposed System for Standardized Access/Disclosure of Non-Public Registration Data (SSAD) and its associated policy recommendations (section II)
- An overview of key issues of public policy interest that remain open and on which the EPDP is expected to deliberate further in the coming months (section III)
- Next steps for the EPDP Team and the GAC (section IV)

For more background and reference documentation please see the [Relevant Documentation](#) section at the end of this document.

II. Key proposals

1. **The SSAD is to offer centralization of requests and decentralization of responses, with continuous evolution of the model, as experience is gained, towards increasing automation and standardization**
   - The objective of the SSAD is to provide a predictable, transparent, efficient and accountable mechanism for the access to and disclosure of non-public registration data.
   - A Central Gateway is to receive all requests for disclosure, as emanating from accredited requestors
   - The Central Gateway is to relay each request to the responsible contracted party, and would provide, along with the request, a recommendation to disclose non-public data or not.
   - Requests are to be reviewed by contracted parties and responses are to be provided to the requestor directly, although how this is to be achieved will be an implementation issue.
   - The SSAD aims to evolve as experience is gained, and be automated where technically feasible and legally permissible, accordingly.
   - A Central Gateway Manager (expected to be ICANN org or its designee) would be responsible to collect feedback on all disclosure decisions taken. This is expected to inform systems improvement and enable moving to a more automated/centralised system.

2. **A Mechanism is to be established to advise ICANN Org and Contracted parties on evolution and continuous improvement of the SSAD**
   - The EPDP Team recognizes the evolving nature of the SSAD but seeks to avoid having to conduct a Policy Development Process every time changes that consistent with these policy recommendations need to be made
   - The EPDP Team is considering establishing an Advisory Group, barring any existing mechanism, to oversee and guide continuous improvements
   - This mechanism would focus on implementation of the SSAD, not to contradict with policy or ICANN contractual requirements. This may involve making recommendations to the GNSO Council on policy issues.

3. **The SSAD is to automate disclosure in response to some public authorities' requests, and to seek harmonization of responses in other cases**
   - Disclosure of non-public data is expected to be automated in response to requests from public authorities/law enforcement from "*local or otherwise applicable*" jurisdictions (see Implementation Guidance in Preliminary Recommendation #7, and see also Open Issues section below).
   - For other requests (and in particular requests from public authorities in other jurisdictions), disclosure is subject to a decision by Contracted Parties as detailed in a framework laid out in Preliminary Recommendation #6. This framework intends to provide a level of standardization and predictability for contracted parties' assessment of whether the requestor's legitimate interest outweighs the interest or fundamental rights and freedoms of the data subject (balancing test under Art. 6.1.f of the GDPR).

4. **Disclosure within 1 business day expected for urgent requests**
   - The SSAD recognizes urgent requests in circumstances that pose "*imminent threat to life, serious bodily injury, critical infrastructure (online or offline) or child exploitation*", whether they originate from Public Authorities (including Law Enforcement), or other third-parties
   - In such cases, and in particular when the request does not qualify for automated disclosure (see #3 above), contracted parties would have up to 1 business day to respond, with a service level agreement target of meeting this standard in 95% of cases.

5. **Accreditation into the SSAD to follow the proposed GAC principles, with an oversight roles for ICANN org**
   - The accreditation principles for governmental bodies to gain access to a future SSAD (as proposed by the GAC) were generally accepted and are expected to be incorporated into the EPDP Phase 2 Initial Report, with some clarification in definitions of terms which are merged with that of the report.
   - Given the oversight role proposed for the ICANN org as the ultimate Accreditation Authority (see Main SSAD Roles & Responsibilities in Section 4.1 of the Initial Report), countries/territories' chosen accreditation authorities would need to coordinate with ICANN org in order to facilitate appropriate deliver and interoperability of credentials into the SSAD.

6. **Confidentiality of law enforcement requests**
   - Disclosure requirements (Preliminary Recommendation #11) recognize the need to preserve confidentiality of requests related to ongoing investigations, and the need for contracted parties not to disclose their existence to data subjects when exercising their rights of access to the processing of their data.
   - Discussions continue on circumstances under which such disclosures may happen, possibly in cooperation with the requesting public authority.

7. **The EPDP Phase 2 recommendations recognize the need for the SSAD to meet applicable Data Protection Laws around the world, not just GDPR**. To date, the EU GDPR has been a main driver of policy deliberations. The EPDP recognizes however that the SSAD must be compliant with the GDPR and other applicable data protection legislation.

III. Open Issues

1. **Data Controllership for key data processing activities such as disclosure to third parties.** The proposals of the EPDP Team currently assume that for most data processing activities, ICANN and Contracted Parties will be "Joint Controllers" in the sense of the GDPR, that is sharing responsibility for compliance with the law. This is consistent with input received from the DPAs and outside counsel to date. However, it is expected that details of these shared responsibilities would be laid out in data protection agreements to be negotiated between ICANN and Contracted Parties per EPDP Phase 1 Recommendation 19.

2. **Jurisdiction criteria for automatic disclosure in response to LEA requests.** The EPDP Team still needs to clarify what is(are) the relevant jurisdiction(s) to take into account: the registry's, registrar's or that of where offices are located ?

3. **Distinction between Legal and Natural person for the redaction of contact data**
   - In the GAC San Juan Communiqué (15 March 2018), the GAC advised the ICANN Board "*to instruct the ICANN organization to: [...] Distinguish between legal and natural persons, allowing for public access to WHOIS data of legal entities, which are not in the remit of the GDPR*". ICANN Board consideration of this advice is still being deferred following an initial GAC request (17 May 2018)
   - Based on EPDP Phase 1 Recommendation 17, the ICANN Board directed ICANN org (15 May 2019) to undertake a study to determine the costs and risks of differentiating between legal and natural persons. Per information provided to the EPDP Team on 28 January 2020, preliminary results of this ongoing study are expected by March 2020 ("baseline report"), to then be finalized by mid-May 2020.
   - In the meantime, the EPDP Team is to deliberate further on this matter, possibly on the basis of clarifications it would seek from outside legal counsel Bird & Bird on its previously issued legal memo (25 January 2019) regarding *liability in connection with a registrant's self-identification as a natural or non-natural person*

4. **Ensuring Accuracy of WHOIS data for purposes for which it is processed, including disclosure in response to lawful requests by third parties with a legitimate purpose**
   - WHOIS accuracy (beyond the right of data subject to accuracy of their data) is of key importance to the GAC, consistent with the [GAC Principles regarding gTLD WHOIS Service](#) (28 March 2007), as recalled in the [GAC Abu Dhabi Communiqué](#) (1 November 2017), and more recently in the [GAC Comments on the RDS-WHOIS2 Review Team Recommendations](#) (23 December 2019)
   - The EPDP Team has not yet reached a conclusion on this "priority 2" item, a carry over from Phase 1 wich recognized 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 [legal Advice](#) (9 February 2018) on the meaning of the accuracy principle pursuant to the General Data Protection Regulation.
   - A [request](#) for further legal advice is currently being debated in the EPDP Team

5. **Privacy/Proxy and Pseudonymized Emails**
   - The EPDP Team has not yet reached a conclusion on these "priority 2" items and is currently [seeking legal advice](#) to understand whether it would be permissible to replace the email address provided by the data subject with an alternate publicly accessible email address that in and of itself would not identify the data subject.
   - Discussion of the relevance and accreditation of privacy/proxy services in the context an SSAD is not currently planned in EPDP deliberations despite the current suspension of the Privacy Proxy Services Accreditation policy (PPSAI) implementation and the related GAC Advice in the Kobe and Montréal Communiqués (see the [GAC Comments on the RDS-WHOIS2 Review Team Recommendations](#) of 23 December 2019 for further discussion of this topic)

6. **Reverse Lookup capabilities**
   - Law enforcement agencies and other legitimate interests have traditionally relied on third-party services to proactively identify all domain names associated with a given set of contact data
   - However, these services have been impaired by the redaction of all contact data following the adoption of the [Temporary Specification on gTLD Registration Data](#) expired on 20 May 2019, now replaced by the current [Interim Registration Data Policy for gTLDs](#).
   - As part of its deliberations on whether [to seek legal advice](#) to understand if such lookups can be compliant with the GDPR and be allowed under the SSAD, some stakeholders argue that they are not in the scope of the EPDP's mandate.
   - GAC Representatives in the EPDP are seeking, at the very least, to prevent the SSAD and its associated policy from banning the development of such services in the future.

7. **Definition of mechanism to oversee and guide continuous improvement of SSAD policy**. The EPDP Team is expected to deliberate further on whether a new mechanism (such as the proposed SSAD Advisory Group) is needed in lieu of existing mechanisms in the ICANN governance model. Should an Advisory Group be the recommended way forward, representation on and operation of this group would likely require additional deliberations.

8. **Cost to public authorities requesting non-public data**.
   - The EPDP Team has agreed that operations of the SSAD should be based on cost-recovery and not lead to data subjects bearing the costs of the disclosure of their data to third parties.
   - It is therefore envisioned that requestors would bear fees associated with using the SSAD.
   - While the EPDP recognizes specificity and constraints of public entities, it is still unclear what sort of fee models would apply to public authorities' requests.

9. **Implementation timeline.** The EPDP has not discussed the expected timeline for the development and roll out of the SSAD. In light of ongoing policy implementations, including that of the EPDP Phase 1 recommendations, It can be expected that implementing EPDP Phase 2 recommendations may take several years. This supports the rationale for the related [advice](#) in the [GAC Montréal Communiqué](#) (6 November 2019) to: "*Instruct the ICANN organization to ensure that the current system that requires "reasonable access" to non-public domain name registration is operating effectively*".

IV. Next Steps

- The EPDP Team will provide an overview of its Phase 2 Initial Report during a **[webinar](#) on Thursday 13 February at 1400 UTC.**

- The GAC Small Group expects to circulate for GAC Members' consideration before the ICANN67, a proposed GAC comment on the EPDP Phase 2 Initial Report. The GAC, and GAC Members individually, will have the opportunity to provide **comments until 23 March 2020** (after the end of ICANN67)**.**

- The EPDP Team is expected to process public comments received in addition to addressing outstanding work items in the coming months. It plans on issuing its **final recommendations in early June 2020**, before ICANN68 (22-25 June 2020)

Relevant Documentation

- GAC Background Documentation
  - [GAC Discussion Paper on EPDP gTLD Registration Data](#) (25 September 2019)
  - [GAC ICANN66 Session](#) Briefing and material (3 November 2019)

- EPDP Reference Documentation
  - EPDP Phase 2 [Initial Report](#) (7 February 2020)
  - EPDP Phase 1 [Final Report](#) (20 February 2019)
  - [ICANN Board Scorecard on EPDP Phase 1 Recommendations](#) (15 May 2019)

- ICANN Engagement with DPAs
  - ICANN org's CEO [request for guidance](#) to the EDPB (25 October) and supporting paper [Exploring a Unified Access Model for gTLD Registration Data](#)
  - Belgian DPA [response](#) to ICANN (4 December 2019)