ICANN | GAC
Governmental Advisory Committee

ICANN 75
ANNUAL GENERAL
KUALA LUMPUR

RDS/WHOIS and Data Protection Policy (incl. Accuracy)

Session 5

Contents

Session Objective

This session aims to discuss status and consider possible next steps for the GAC in relation to deliberations and implementation efforts aiming to establish a new WHOIS/Registration Data policy regime taking into account relevant Data Protection law. The GAC will be briefed on latest developments and related policy concerns, in connection with EPDP Phase 1 Implementation, the expected ICANN org proposal for a WHOIS Disclosure System (formerly "SSAD-light") in response to to EPDP Phase 2 Policy Recommendations, and status of scoping of possible future policy work regarding accuracy of registration data.

Leadership Proposal for GAC Action

1. **Develop a possible GAC Comment** on the Draft Registration Data Consensus Policy for gTLDs (24 August 2022) proposed as replacement of the Interim Registration Data Policy for gTLDs (20 May 2019) and in implementation of the GNSO Policy Recommendations of Phase 1 of the Expedited Policy Development Process (EPDP) on gTLD Registration Data[1]. The new Consensus Policy proposal also includes changes to existing ICANN Policies including the superseding of the Thick WHOIS transition Policy and revision of the implementation of the Registration Data Access Protocol (RDAP).

2. **Consider providing input to the ICANN Board** regarding ICANN org's proposal for a simplified WHOIS Disclosure System[2] (previously referred to as "SSAD light"). This is in response to the GNSO's request of a proof of concept (27 April 2022) for the Standardized System for Access/Disclosure of Registration Data (SSAD), after ICANN org's analysis of costs, benefits and risks in its SSAD Operational Design Assessment (25 Jan. 2022).

---

[1] EPDP Phase 1 recommendations were adopted by the ICANN Board (15 May 2019) after consideration of GAC public policy Input (24 April 2019).

[2] The outline of which was presented to the GNSO Small Team on 10 August 2022, briefly discussed with the GAC on 31 August and the full details of which are expected in a Design Document to be published shortly before ICANN75, for discussion during ICANN75 (see Sunday 17 September sessions at 15:00 and 16:30 Kuala Lumpur local time)

3. **Examine progress in relation to accuracy of registration data** in gTLDs in light of ICANN's ongoing engagement with European authorities[3], and [preliminary recommendations](#) of the Registration Data Accuracy (RDA) scoping team to the GNSO Council.

4. **Continue assessing the public interest impacts of the current policy regime** for gTLD registration data, considering:

    a. **Prospects of implementation of, and community concerns with policy recommendations** in Phase 1 and Phase 2A of the Expedited Policy Development Process (EPDP) on gTLD Registration Data;

    b. **Current and expected future experience of parties seeking registration data** for a legitimate purpose which may have not aligned with the GAC's Advice to "*ensure that the current system that requires 'reasonable access' to non-public domain name registration is operating effectively",* and will evolve with the potential deployment of the new Registration Data Consensus Policy for gTLDs as well as ICANN org's proposed WHOIS Disclosure System.

    c. **The continued impact of delayed implementation of the privacy/proxy services accreditation policy recommendations**. Despite GAC Advice to resume implementation of the Privacy/Proxy Accreditation Policy, this is still suspended and continues to delay the delivery of an accreditation program including a law enforcement disclosure framework.

Current Status and Recent Developments

-   **The foundations of a new Registration Data Policy regime is proposed to become effective before the end of 2024.**

    -   ICANN recently published a proposed [Draft Registration Data Consensus Policy for gTLDs](#) (24 August 2022) as developed by ICANN org with the EPDP Phase 1 Implementation Review Team (IRT), in response to the ICANN Board's [resolutions](#) adopting the policy recommendation of EPDP Phase 1 (15 May 2019). Public comment submissions are expected by 31 October 2022.

    -   This Consensus Policy **would become part of ICANN's contractual requirements for Registries and Registrars within 18 months of its adoption** (currently planned in Q1 2023) and replace the current [Interim Registration Data Policy for gTLD](#) (20 May 2019) which currently requires Contracted Parties to continue to implement measures that are consistent with the [Temporary Specification](#) (20 May 2018). I**t would also introduce [changes to existing ICANN Policies](#)** which rely on, or relate to Registration Data, including the superseding of the Thick WHOIS transition Policy and revisions of the implementation of the Registration Data Access Protocol (RDAP).

---

[3] Expected following a [letter to the European Commission](#) (2 June 2022) and discussion of [scenarios](#) for engagement with European Data Protection Authorities with the GNSO's Registration Data Accuracy Scoping team.

- **The GAC provided input** at several stages of the developments leading to these proposals, notably:

  - Input to the ICANN Board (24 April 2019) before its consideration of the GNSO Policy Recommendations from EPDP Phase 1, in which the GAC deemed the "*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 also highlighted in this correspondence prior policy concerns that had been reflected in the GAC Input on the EPDP Final Report (20 February 2019), in the GAC/ALAC Statement on EPDP (13 March 2019) and in GAC Advice or positions included in the following GAC Communiqués: San Juan (15 March 2018), Barcelona (25 October 2018) Panama (28 June 2018) and Kobe (14 March 2019).

  - Advice to the ICANN Board in the Montréal Communiqué (6 November 2019), to "*ensure that the current system that requires 'reasonable access' to non-public domain name registration is operating effectively*" (accepted by the ICANN Board on 26 January 2020) and "*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*", which were the subject of follow up in the GAC Communiqués of ICANN70 (25 March 2021), ICANN71 (21 June 2021), ICANN72 (1 November 2021) and ICANN73 (14 March 2022) and related interactions with the ICANN Board[4].

- As part of EPDP Phase 1 Implementation, the conclusion of **Data Processing Agreements (DPAs) between ICANN and Contracted Parties** consistent with EPDP Phase 1 Recommendation 19, which the GAC referred to in its ICANN72 and ICANN73 Communiqués, is identified in the EPDP Phase 1 Implementation timeline (updated 10 August 2022) as having reach 79% completion.

---

[4] See Board GAC Advice Scorecards related to each Communinqué at:
https://gac.icann.org/activity/icann-action-request-registry-of-gac-advice

- **Feasibility of a System for Standardized Access/Disclosure of Registration Data (SSAD)** is expected to continue to be discussed between the GNSO Council, the ICANN Board and ICANN org on the basis of the proposed design of a simplified WHOIS Disclosure System following the [GNSO's request for an SSAD proof of concept](#) (27 April 2022)

  - The GNSO [resolution](#) on the EPDP Phase 2 Final Report (24 September 2020) **adopted the 18 recommendations that seek to establish an SSAD, requesting a consultation with the ICANN Board** prior to its consideration of the policy recommendations **to discuss** *"questions surrounding the financial sustainability of SSAD and some of the concerns expressed within the different minority statements""*[5].

  - Prior to considering the GNSO's SSAD Policy Recommendations, **the ICANN Board** [launched](#) (25 March 2021) an **Operational Design Phase (ODP)** [to perform an assessment](#) of possible implementation parameters.

  - After presentations of design proposals and costs assessments in several [webinars](#) to the GNSO, GAC, and ICANN Community, the GAC [alerted the GNSO](#) (15 December 2021) that ICANN's **proposed design of Governmental Accreditation Authorities goes beyond the scope envisioned** in [GAC Principles on Accreditation](#) (21 Jan. 2020) which were incorporated in Recommendation 2 of the EPDP Phase 2 Final Report.

  - A GNSO Small Team has reviewed ICANN org's [Operational Design Assessment](#) (25 Jan. 2022) in support of the GNSO Council's consultation with the ICANN Board and consideration of questions and concerns expressed in a [Board letter](#) (24 Jan. 2022).

  - In a [letter to the ICANN Board](#) (27 April 2022), the GNSO shared **concerns with ICANN's Operational Design Assessment** and called for a pause of the Board's consideration of the SSAD recommendations to allow for work to continue on a "proof of concept" in collaboration with ICANN org who suggested it could propose a simplified "SSAD Light Design" in a [Concept Paper](#) (6 April 2022)[6]. The Board [confirmed](#) (9 June 2022) its agreement and **decision to pause the consideration of the policy recommendations**.

  - In the [The Hague Communiqué](#) (20 June 2022), while looking forward to the "*timely completion of the 'proof of concept'*", the GAC emphasized "*the importance of providing specific timelines and goals*" for this work and clarifying "*what will happen after the 'proof of concept' phase concludes*".

  - On 10 August 2022, **ICANN org outlined its approach** to a simplified WHOIS Disclosure System concept in a [call with the GNSO Small Team](#) (to be further discussed in an upcoming Design Document and during ICANN75):
    - The system would provide a central portal for intake of requests, at no cost to requestors, who would not be authenticated

---

[5] During a GAC/GNSO Leadership call (29 September 2020) and during the pre-ICANN69 [Joint GAC/GNSO Call](#) (1 October 2020), The GNSO leadership clarified that it intends to focus this consultation on the issue of financial sustainability and that it was not expected to change its policy recommendations to the ICANN Board.

[6] The approach proposed by ICANN org in the SSAD Light Concept Paper was presented to the GAC during the [Pre-ICANN74 ICANN org's briefing to the GAC](#) on 31 May 2022 (*GAC website login required*)

- Registrars, whose participation in the system would be voluntary, are the only recipients of requests for disclosure
- While status of requests may be provided by the system, all communications between requestors and registrars would take place outside of the system

- **The GNSO Scoping Team on Accuracy of Registration Data** has finalized [preliminary recommendations](#) for the GNSO Council (2 September 2022), which is expected to determine the timing and contours of further scoping work, taking into consideration several dependencies regarding the viability of accessing registration data to assess the current state of accuracy.
  - The GNSO Council adopted substantive and procedural [instructions](#) for the Scoping Team (22 July 2021). In the [ICANN72 GAC Communiqué](#) (1 November 2021) the GAC welcomed "*the effective start of the accuracy scoping exercise launched by the GNSO*" and expressed support for "*all four assignments*" of the team.
  - The GAC has nominated representatives from the European Commission and United States to participate in these [weekly deliberations](#) which started on 5 October 2021.
  - The work of the scoping team was informed by an [ICANN org briefing](#) (26 February 2021), an [ICANN org Memo on the WHOIS Accuracy Reporting System](#) (January 2022) and [ICANN org responses](#) to questions by the Scoping Team.
  - In the [ICANN72 GAC Communiqué](#) (1 November 2021) as part of *Issues of Importance* the GAC reiterated "*that **maintaining accurate domain name registration data is an important element in the prevention and mitigation of DNS abuse**". The GAC also noted that it is "*looking forward to exchanging with other constituencies not only on the definition and measurement of accuracy but also on solutions on how to enhance accuracy. **The GAC gives particular importance to the verification, validation and correction of all registration data** by registrars, and certain registries, in line with their contractual obligations, and supports rigorous monitoring and enforcement of such contractual obligations by ICANN.*"
  - In the [ICANN73 Communiqué](#) (14 March 2022), the GAC highlighted that as part of the work of the scoping team to date, it "*has emphasized the **importance of holding contracted parties accountable for their compliance with the existing accuracy requirements**, as well as the **importance of increasing transparency about compliance**, in order to inform an evidence-based analysis of these issues*"
  - Prior to ICANN74, the leadership of the Accuracy Scoping Team [reported](#) that an interim report[7] (deliverables #1 and #2) should be delivered in June 2022, that its Chair would step down by then, and that further work of the scoping team (on assignment #3 and #4) cannot be planned until registration data is gathered and studied to evaluate accuracy.
  - The ICANN org shared with the Scoping Team a [set of scenarios](#) for which it plans to consult the European Data Protection Board on whether or not ICANN org has a legitimate purpose that is proportionate (i.e. not outweighed by the privacy rights of the individual data subjects) to request that Contracted Parties provide access to registration

---

[7] See Accuracy Scoping Team working documents: [Write-up on Assignment 1 and 2](#), including separate [section C.2.2](#)

data records for purposes of accuracy verification.

- In its [preliminary recommendations](#) for the GNSO Council (2 September 2022) the scoping team recommends:

    - **A registrar Survey** be conducted on the status of accuracy of their domains under management (Recommendation 1) and that **a Registrar Audit** be considered regarding their procedures for determining the accuracy of registration data (Recommendation 2). In the ICANN74 Communiqué, the GAC noted that "*the voluntary nature of the survey [...] could limit the volume of feedback received*" and therefore encouraged "*the team to explore additional and complementary work items, such as testing accuracy controls in a manner that is not dependent upon access to personally identifiable data*". However, the preliminary report notes that "[*a*]*t this stage, the Scoping Team has not identified sufficient benefits of moving forward with any of the other proposals that do not require access to registration data [...]*".

    - **A pause of scoping team work in relation to proposals that require access to registration data** until feasibility is clearer (Recommendation 3) including through: ICANN org's outreach to the European Data Protection Board (EDPB), a possible Data Protection Impact Assessment to be conducted by ICANN, and the finalization of Data Processing Agreements between ICANN and Contracted Parties.

Reminder on Status of Policy Development Pending Further Consideration

- **Policy Development in Phase 2 of the EPDP concluded** with the publication of a [Final Report](#) (31 July 2020), which recommended a System for Standardized Access/Disclosure (SSAD) to gTLD Registration Data with a significant level of divergence among stakeholders as documented in the Consensus Designations (Annex D) and Minority Statements (Annex E), including the [GAC Minority Statement](#) (24 August 2020).

    - **Consensus was achieved on** aspects of the SSAD relating to **accreditation of requestors and centralization of requests** (recommendations 1-4, 11, 13 and 15-17). Once implemented these recommendations should improve the current fragmented systems by providing a central entry point to request access to registration data, according to clearly defined standards, and providing guarantees of appropriate processing (including safeguards for data subjects and requestor).

    - **Stakeholders could not agree on** the policy recommendations necessary to provide for **a System for Standardized disclosure** that meets the needs of all stakeholders involved, including public authorities (recommendations 5-10 and 12). Neither could stakeholders agree on the possibility to evolve the SSAD towards more centralization and more automation of disclosure decisions in the future. (recommendation 18)

    - In the [ICANN70 GAC Communiqué](#) (25 March 2021), the GAC Advised the ICANN Board "*to consider the [GAC Minority Statement](#) and available options to address the public policy concerns expressed therein, and take necessary action, as appropriate.*" The Board

[accepted](#) the advice (12 May 2021) noting that "*standing on its own, the GAC's Minority Statement does not constitute consensus advice*," and included a detailed discussion of issues raised in the GAC Minority Statement on EPDP Phase 2.

  ○ The GAC issued a [response](#) (6 October 2021) to the Board's [clarifying questions](#) on the ICANN70 advice that were re-iterated before and discussed during the [GAC/Board ICANN71 Communiqué clarification call](#) (29 July 2021)

- **Policy Development in Phase 2A of the EPDP** to address the issues of **legal vs. natural persons** and the **feasibility of unique contacts** to have a uniform anonymized email address, **concluded** with the publication of a [Final Report](#) (3 September 2021)

  ○ The EPDP Team Chair presented the report as "*a compromise that is the maximum that could be achieved by the group at this time under our currently allocated time and scope, and it should not be read as delivering results that were fully satisfactory to everyone*" and underscored "*the importance of the minority statements in understanding the full context of the Final Report recommendations*"

  ○ In its [Minority Statement](#) (10 September 2021), the GAC acknowledged "*the usefulness of many components of the Final Recommendations*" including:
    – *the creation of data fields to flag/identify legal registrants and personal data;*
    – *specific guidance on what safeguards should be applied to protect personal information when differentiating between the domain name registrations of legal and natural persons;*
    – *encouragement for the creation of a Code of Conduct that would include the treatment of domain name registration data from legal entities;*
    – *encouragement for the GNSO to follow legislative developments that may require revisions to the current policy recommendations, and*
    – *useful context and guidance for those who wish to publish pseudonymized emails.*

  ○ **The GAC** noted however that it **"remains *concerned that almost none of the Final Recommendations create enforceable obligations*"** which "***fall short of the GAC's expectations** for policies that would require the publication of domain name registration data that is not protected [...] and create an appropriate framework to encourage the publication of pseudonymized email contacts with appropriate safeguards.*"

  ○ After adoption of these policy recommendations by the GNSO Council, the ICANN Board provided the [bylaw-mandated notification to the GAC](#) (9 Dec. 2021), in [response](#) to which **the GAC requested that the ICANN Board** "c*onsiders [...] the GAC Minority Statement in its entirety, as well as available options to address the outstanding public policy concerns expressed therein.*" (9 Feb. 2022).

  ○ On 10 March 2022, the ICANN Board [adopted](#) the Phase 2A policy recommendations and directed ICANN org to develop and execute an implementation plan for these resolutions.

Key Reference Documents

- Accuracy Scoping Team [preliminary recommendations](#) to the GNSO Council (2 September 2022)

- [Draft Registration Data Consensus Policy for gTLDs](#) (24 August 2022)

- [ICANN org Update to the Accuracy Scoping Team](#) on scenarios for EDPB engagement (9 May 2022)

- ICANN org SSAD [Operational Design Assessment](#) (25 January 2022)

- GAC Advice in the [GAC ICANN72 Communiqué](#) (1 Nov. 2021) and related ICANN Board [Scorecard](#) (16 January 2022)

- GAC Advice in the [GAC ICANN71 Communiqué](#) (21 June 2021) and related ICANN Board [Scorecard](#) (12 September 2021)

- GAC Advice in the [GAC ICANN70 Communiqué](#) (25 March 2021), related ICANN Board [Scorecard](#) (12 May 2021) and [GAC Response to ICANN Board Clarifying Questions](#) (16 Nov. 2021)

- [GAC Minority Statement](#) (24 August 2020) on EPDP Phase 2 [Final Report](#) (31 July 2020)

- [GAC Minority Statement](#) (10 September 2021) on EPDP Phase 2A [Final Report](#) (3 September 2021)

- [GAC Response](#) (6 October 2021) to [ICANN Board Clarifying Questions](#) (21 April 2021) on the ICANN70 GAC Advice regarding the GAC Minority Statement on EPDP Phase 2, as reiterated during the ICANN71 Communiqué clarification discussions.

Further Information

GAC Policy Background Document on WHOIS and Data Protection
https://gac.icann.org/briefing-materials/public/gac-policy-background-whois-data-protection.pdf

Document Administration

Title	ICANN75 GAC Session Briefing - RDS/WHOIS and Data Protection Policy
Distribution	GAC Members (before meeting) and Public (after meeting)
Distribution Date	Version 1: 2 September 2022