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

Session 7

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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 framework taking into account relevant Data Protection law.

The GAC will be briefed on latest developments and related policy concerns, in connection with:

- The proposed Registration Data Consensus Policy (EPDP Phase 1);
- The ongoing development of a Registration Data Request Service (RDRS) as a proof of concept of EPDP Phase 2 Policy Recommendations for a System for Standardized Access/Disclosure (SSAD);
- The recent activities related to privacy/proxy services, including the Cancún GAC Advice; and
- Dependencies on the scoping of possible future policy work regarding accuracy of registration data

Leadership Proposal for GAC Action

1. In relation to the proposed Registration Data Consensus Policy (EPDP Phase 1 Implementation), **continue engaging with the ICANN Board on the timeline for response to Urgent Request** for disclosure of registration data in *“circumstances that pose an imminent threat to life, serious bodily injury, critical infrastructure, or child exploitation”*. Following the [GAC Chair request for a review of the matter by the ICANN Board](#) (23 August 2023), the ICANN Board requested that GAC Members share their experience with such requests and responses by Contracted Parties¹.
2. **Consider the need to follow-up on other public policy concerns with the proposed Registration Data Consensus Policy**, as outlined in the [GAC Public Comments](#) (21 Nov. 2022) and highlighted as an Issue of Importance in the [GAC Washington D.C. Comummuniqué](#) (20 June 2023), including:
 - a. **Taking measures to make data of legal persons publicly available** (the ICANN Board [responded](#) that EPDP Phase 2A recommendations on this matter, subject of a [GAC Minority Statement](#) (10 Sep. 2021), are in the queue for implementation²).
 - b. **Ensuring reseller information is included in responses to requests for Registration Data**, given the nature of resellers as *“corporate entities inherent to the registrar’s distribution channel”*, the relevance of their roles and responsibilities to domain name registrations, and the *“benefit in highlighting the best point of contact to deal with notifications of abuse or compromise to the party with the ability to act the quickest or most appropriately”*.³
3. **Seek appropriate information to contribute to, and assess the effectiveness of efforts to promote and onboard registrars in the Registration Data Request Service (RDRS), which is expected to launch after ICANN78**. The GAC noted in the [GAC Washington D.C. Comummuniqué](#) (20 June 2023): *“the importance of maximizing voluntary participation in the system, including through effective outreach and potential incentive structures”*.
4. **Continue assessing the public interest impacts, including on responses to disclosure requests to be provided via the RDRS, of delayed implementation of the privacy/proxy services accreditation policy recommendations**, following previous GAC Advice to resume implementation of the Privacy/Proxy Accreditation Policy. In the Cancún and Washington D.C. Communiqués, the GAC advised, and recalled its advice, for the ICANN Board to provide regular updates on this matter⁴. The ICANN Board responded it *“will continue to provide updates on the ongoing work in this area”*.⁵

¹ See [GAC/Board BGIG call](#) (20 September 2023), and the [Board’s response to the GAC Issues of Importance in the Washington DC Communiqué](#) (18 September 2023)

² See section 7 in the [ICANN Board Comments on Issues of Importance](#) (18 September 2023)

³ See further discussion of developments and GAC input related to reseller information in this briefing on p.16

⁴ See section V.3 p.11 of the [GAC Cancún Communiqué](#) (20 March 2023) and section VI.1 of the [Washington D.C. Communiqué](#) (20 June 2023)

⁵ See p.6 in the [Scorecard of Board Action on GAC Advice](#) (10 September 2023)

5. **Examine opportunities for advancing accuracy of registration data** in gTLDs, following the recently extended pause of the Registration Data Accuracy (RDA) scoping team by the GNSO Council⁶ due to dependencies on ongoing ICANN org activities.

- a. Prior to ICANN76, ICANN determined that *“a sufficient legal basis exists to proceed”* to conducting proactive contractual compliance audit(s) of registrars regarding validation and verification of registration data. Regarding analysis by ICANN of a sample of full registration data for validation and verification of contact data, further and more targeted outreach with European data protection authorities may be required.⁷ In response to the GAC Washington D.C. Communiqué, the Board indicated that ***“ICANN is preparing a comprehensive assessment of what activities it may undertake to study accuracy and/or current registration data obligations in light of applicable data protection laws and its contractual authority to collect such data, which it plans to share with the GNSO”***.⁸
- b. **Regarding the completion of Data Processing Agreements between ICANN and Contracted Parties, the GAC may wish to continue seeking updates on progress**, in collaboration with the GNSO and with the ICANN Board as requested in the [Washington D.C. Communiqué](#).

⁶ See GNSO Council [Resolution 20221117-4](#) (17 November 2022) and [Resolution 20230720-1](#) (20 July 2023)

⁷ See [ICANN org correspondence to GNSO Council](#) (14 March 2023) and previously stated intention to engage with the European Data Protection Board (see [ICANN letter](#) of 2 June 2022 to the European Commission).

⁸ See section 5 in the [ICANN Board Comment on the Issues of Importance in the Washington D.C. Communiqué](#) (18 September 2023)

Current Status and Recent Developments

- **The policy foundations of a new Registration Data Policy regime, the Registration Data Consensus Policy are expected to be further discussed** following the public comment proceeding and recent request by the GAC for the ICANN Board to review this matter.
 - ICANN 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 furtherance of the ICANN Board’s [resolutions](#) adopting the policy recommendation of EPDP Phase 1 (15 May 2019).
 - When adopted, this Consensus Policy **would become part of ICANN’s contractual requirements for Registries and Registrars within 18 months of its adoption** 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). **It 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).
 - **The GAC provided input** at several stages of the developments leading to these proposals, including most recently on the resulting consensus policy proposal:
 - [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 and referenced in this correspondence prior policy concerns it has expressed.
 - 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](#), [ICANN71](#), [ICANN72](#), and [ICANN73](#) and related interactions with the ICANN Board⁹.
 - In the latest [GAC Comments](#) (21 November 2022), **the GAC expressed public policy concerns with the proposed Draft Registration Data Consensus Policy for gTLD**

⁹ See Board GAC Advice Scorecards related to each Communiqué at: <https://gac.icann.org/activity/icann-action-request-registry-of-gac-advice>

including: definition and proposed timelines to respond to urgent requests; collection and publication of reseller data; collection/publication of registration information related to legal entities; need for clear standards around implementation and enforcement; and implementation of a partial system resulting in a policy gap. **The GAC recalled these concerns** in the [Cancún Communiqué](#) (20 March 2023)¹⁰

- Based on consideration of input received from 14 community groups, **ICANN org updated the Draft Consensus Policy Language to reflect its analysis of Public Comments** (see [redline version](#) circulated to the IRT on 4 May 2023). ICANN org also provided [responses to public comments](#) (28 April 2023), which discussed some of the GAC input:
 - **Regarding the timeline for response to Urgent Requests** ICANN’s Implementation Project Team (IPT) *“believes that the 24-hour response time accurately reflects the intent of the EPDP policy recommendations”* (see p.44 of Addendum and section 10.6 of updated consensus policy), but did not extend the definition of urgent requests to include *“imminent or ongoing cybersecurity incidents”*
 - **Regarding the collection and publication of reseller data**, *“the IPT believes that making any recommended changes is beyond the scope of the policy as it would create additional changes that are not required by the EPDP Phase 1 recommendations.”*
 - **Regarding the policy’s impact on Thick WHOIS**, *“The IPT, in consultation with the Implementation Review Team, concluded that ICANN org could enforce a transfer requirement only if the relevant contracted parties agree that a legal basis exists for the transfer and a data protection agreement is in place”*
 - **Regarding the Phase 1/Phase 2A policy gap**, ICANN org reached out to the GAC Small Group on WHOIS/EPDP with a [memo](#) (5 May 2023) which clarified that:
 - *The functionality of distinguishing between legal and natural persons is beyond the scope of the EPDP Phase 1 IRT*
 - *During the EPDP Phase 2A deliberations, the EPDP Phase 2A Working Group made a policy decision not to mandate the contracted parties to change their practices with regard to data of legal and natural persons*
- Following further discussions of the timeline for response to Urgent Requests with the Implementation Review Team (July-August 2023), and despite the disagreement of the GAC’s representatives in the IRT on this matter, **ICANN org planned to publish the proposed [Final Registration Data Consensus Policy](#) on 31 August 2023** with a time frame for response to Urgent request *“without undue delay, generally within 24 hours”* allowing 2 extensions for a total response time of up to 3 business days.
- In a [GAC Chair letter to the ICANN Board](#) (23 August 2023), the **GAC expressed its public policy concern with the proposal, and requested the ICANN Board “carefully review the proposed implementation of this particular issue and consider next steps that would achieve an outcome that better meets the public safety considerations posed by urgent requests”**. The GAC also:

¹⁰ See Issues of Importance to the GAC, Section IV.3 pp.7-8 in the [Cancún Communiqué](#) (20 March 2023)

- Observed “*the **tension between the proposed implementation and the concerns conveyed by the GAC during the public comment process.** In this regard, we note ICANN’s commitment to ‘seeking input from the public, for whose benefit ICANN in all events shall act’.*” ([ICANN Bylaws](#), Section 1.2(a)(iv) Commitments)
 - Stressed its belief that **the proposal “is not ready for publication and should be considered further”** while “*the balance of the implementation of the Consensus Policy should move forward*”
 - Highlighted its concerns that “*[t]his outcome calls the effectiveness of the public comment process into question and raises further questions about the interplay between the IRT and the IPT and whether all views, including those put forth by the GAC, have been adequately addressed*”
- Subsequently to the GAC letter, the SSAC representative in the IRT [signaled](#) (28 August 2023) that SSAC was also working on this matter, and the [Registrars Stakeholder Group wrote to the ICANN Board](#) (8 September 2023) in reaction to the GAC letter.
 - ICANN org [indicated](#) (14 September 2023) that “**the ICANN Board decided that additional time is needed to consider the appropriate next steps**” and confirmed that ICANN would put a hold on the publication until future notice.
 - During the [GAC/Board BGIG call](#) (20 September 2023) [*GAC website login required*] the ICANN Board indicated that it questioned whether the proposal is fit for purpose and consistent with the [ICANN Board Comments on the Issues of Importance in the Washington D.C. Communiqué](#) (18 September):
 - *[...] The Board understands that for most cases of an urgent nature, law enforcement or other parties seeking registration data rely on existing channels including direct contacts with the relevant registry operator and/or registrar. The Board further understands that this may not be possible in all cases, and the policy requirement on responses to urgent requests is to provide a “ceiling” so that when this process is relied upon, these responses have maximum time constraints..*
 - **The Board would be interested in any data the GAC can provide as to experiences of its members in working with contracted parties on requests of an urgent nature, including the channels used and timing for responses provided.** [...]
 - Additionally, as part of EPDP Phase 1 Implementation, the conclusion of **Data Processing Agreements (DPAs) between ICANN and Contracted Parties** which were identified as a prerequisite for publication of the Registration Data Consensus Policy, consistent with EPDP Phase 1 Recommendation 19, and which the GAC referred to in its ICANN72, ICANN73, ICANN75 Kuala Lumpur, ICANN76 Cancún Communiqués and ICANN77 Washington D.C. Communiqué, were last identified in the [EPDP Phase 1 Implementation timeline](#) (last updated 3 April 2023) as standing at 79% completion.

- **Feasibility of a System for Standardized Access/Disclosure of Registration Data (SSAD) is now focusing on the implementation of the Registration Data Request Service (RDRS)**, following the [GNSO’s request for an SSAD proof of concept](#) (27 April 2022) on the basis of an ICANN org [Design Paper](#) (13 Sep. 2022) and [updates](#) (7 Nov. 2022) [suggested](#) by the GNSO Council to the ICANN Board (17 Nov. 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”** including in the [GAC Minority Statement](#) (24 August 2020).
 - 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. A GNSO Small Team reviewed ICANN org’s resulting [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)¹¹. The **ICANN 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*”.
 - Shortly before ICANN75, ICANN org introduced a [WHOIS Disclosure System Design Paper](#) (13 Sep. 2022) the key features of which were considered in [GAC plenary](#) (20 Sep. 2022).
 - In the [Kuala Lumpur Communiqué](#) (26 September 2022), the GAC noted the proposed WHOIS Disclosure System is a **useful first step which would facilitate the collection of useful data**, to possibly shed light on usage rates, timelines for response, and percentages of requests granted or denied. The GAC also deemed **important to properly log Information about approvals or denials of requests**, timing of the response, and reasons for denial; **and to include a mechanism to allow for confidential law enforcement requests**.

¹¹ 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*)

- The **GNSO Council** adopted the [addendum](#) (7 Nov. 2022) to the SSAD ODA Small Team [Preliminary Report](#) (4 April 2022) and expressed being **“supportive of the request that the ICANN Board proceeds with the implementation of the Whois Disclosure System”** in the [GNSO Chair letter to ICANN Board Chair](#) (17 Nov. 2022) consistent with ICANN org’s [WHOIS Disclosure System Design Paper](#) (13 Sep. 2022)
- On 27 February 2023, the ICANN Board [resolved](#) to **launch the implementation of the WHOIS Disclosure System**, or “Registration Data Request Service” per the associated [announcement](#) (2 March 2023).
- In the [Cancún Communiqué](#) (20 March 2023) **the GAC advised the ICANN Board to “direct ICANN org to promptly engage with the PSWG to identify and advance solutions for confidentiality of law enforcement requests so as not to preclude participation by law enforcement requesters when measuring usage of the WHOIS Disclosure System”**. This advice was eventually accepted by the ICANN Board per its [Scorecard of Board Action](#) (15 May 2023)
- Following discussion during the [Board/GAC Clarification call](#) (11 April 2023), the GNSO Small Team on EPDP Phase 2 hosted a [subteam meeting](#) (10 May 2023) dedicated to the **discussion of confidentiality of law enforcement requests between representatives of the GAC PSWG, ICANN org** and observers from the GNSO Small Team. A [follow-up discussion](#) (5 June 2023) followed shortly before ICANN77.
- On 16 and 17 May 2023, ICANN held [two webinars](#) during which the user interface of the future Registration Data Request Service (RDRS) was presented and discussed by community members, including representatives from the GAC PSWG.
- In the [Washington D.C. Communiqué](#) (20 June 2023), **the GAC noted “the importance of maximizing voluntary participation in the system, including through effective outreach and potential incentive structures”** and stressed **“the importance of providing users of the RDRS with easy to access step-by-step training, and guidance”**.
- In the [ICANN Board Comments on the Issues of Importance in the Washington D.C. Communiqué](#) (18 September), the ICANN Board shared **“the same sentiment as the GAC on the importance of maximizing the participation of the users, both from ICANN-accredited registrars and requestors”**. It noted **“that ICANN org has been conducting its various engagement and outreach efforts and will continue to do so up until and beyond the launch of the service”**. It also indicated that **“ICANN org has been, and will provide a number of webinars to walk through how to use the system”** and that **“ICANN org is preparing various informational materials, such as FAQs, user guides, and howto videos, to ensure participating users can utilize the service with ease.”** This information available at: <https://www.icann.org/rdrs-en>
- On 21 September 2023, the GNSO Council approved the [Charter for an RDRS Standing Committee](#) to be tasked with reviewing the data that will be produced by ICANN org on a monthly basis following the launch of the RDRS.

- **The work of the GNSO Scoping Team on Accuracy of Registration Data** remains paused, while ICANN org reports recent progress in its assessment of whether or not it has a legitimate purpose to request access to registration data records for purposes of accuracy verification, as well as consideration of a comprehensive assessment of activities it may undertake to study accuracy.
 - The GNSO Council adopted substantive and procedural [instructions](#) for the Scoping Team (22 July 2021). In the [ICANN72 GAC Communiqué](#) (1 Nov. 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 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) 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*”
 - In May 2022, the ICANN org shared with the Scoping Team a [set of scenarios](#) for which it planned 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 data records for purposes of accuracy verification.
 - In its [preliminary recommendations](#) for the GNSO Council (2 September 2022) the scoping team recommended:
 - **A registrar Survey** be conducted on the status of accuracy of their domains under management (Recommendation 1). In the [ICANN74 Communiqué](#) (20 June 2022), 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 Registrar Audit** be considered regarding Registrars procedures for determining the accuracy of registration data (Recommendation 2)
- **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.
- **GNSO Council adopted a [motion](#)** (17 Nov. 2022) **pausing the work of the scoping team and deferring consideration of the recommendations to conduct a survey and an audit** *“until such time the DPA negotiations between ICANN org and Contracted Parties have completed and there is feedback from ICANN org on if/how it anticipates the requesting and processing of registration data will be undertaken in the context of measuring accuracy, or for six months, whichever is the shorter”.*
- In a [GNSO Council letter to ICANN org](#) (1 December 2022), **ICANN org was requested to “Proceed with both (i) your outreach to the European Data Protection Board and (ii) your work on a Data Protection Impact Assessment in connection with the scenario(s) in which the request and processing of registration data takes place as a matter of urgency; Finalize negotiations on the Data Processing Agreement (DPA) as soon as practicable, as the absence of a completed DPA may act as a roadblock for the policy work before the GNSO Council.”**
- In a [correspondence to the GNSO Council](#) (14 March 2023) ICANN org reported it has determined that **“a sufficient legal basis exist to proceed” to conduct proactive contractual compliance audit(s) of registrar compliance with registration data validation and verification requirements** (Scenario 2), while further, more targeted outreach with European data protection authorities may be required¹² regarding analysis by ICANN of a sample of full registration data for validation and verification of contact data (Scenario 3)
- In the [Washington D.C. Comummuniq  ](#) (20 June 2023), the GAC welcomed *“ICANN org’s completion of a Data Protection Impact Assessment (DPIA) on a contractual compliance audit that could shed light on the current state of accuracy”* and sought *“an update on plans to resume the Scoping Team’s work”* given that *“over six months have passed since the GNSO adopted a motion to pause the work of the Scoping Team”*. It further proposed that *“further consideration [be given] to activities that may be resumed by the Accuracy Scoping Team”*.
- In a [GNSO Council letter](#) (3 August 2023) sent to ICANN org and Contracted Parties, the GNSO Council indicated it is *“awaiting on the one hand the outcome of the work by ICANN*

¹² Consistent with ICANN’s previously stated intention to engage with the European Data Protection Board (see [ICANN letter](#) of 2 June 2022 to the European Commission).

org on the scenario(s) in which the request and processing of registration data takes place and on the other hand the finalization of the Data Processing Agreement (DPA) [...].”

- Regarding the completion of DPAs, in the [Washington D.C. Communiqué](#) (20 June 2023), the GAC flagged “*it would be helpful to receive quarterly updates on the status of the DPAs*”. The ICANN Board responded in its [Comments on the Issues of Importance in the D.C. Communiqué](#) (18 September): “**ICANN org and the Contracted Parties have just a few issues remaining to negotiate. ICANN org will conduct a public comment period on the DPS once negotiations are completed, so the community can review the terms. Both ICANN org and the Contracted Parties say they remain optimistic the DPS will be in place in time for the implementation of the Registration Data Policy.**”

- In the meantime, status of the **Review Team recommendations regarding Registration Data Accuracy**, as reported in the [ICANN Specific Reviews Q2 2023 Quarterly Report](#) (30 June 2023) and per a recent ICANN Board [resolution](#) (10 September 2023) on certain CCT and SSR2 Review Recommendations, is as follows:
 - **Recommendations 4.1, 4.2 and 5.1 of the RDS-WHOIS2 Review Team [Final Report](#)** (3 September 2019) **relating to data accuracy monitoring and enforcement** (all identified as “High” priority) **remain in “Pending Board Consideration” status** in light of continued dependencies on Board consideration of the SSAD and the work of the Registration Data Accuracy Scoping Team.

 - **Recommendation 9.2 of the SSR2 Review Team [Final Report](#)** (25 January 2021), for ICANN org to **proactively monitor and enforce contractual obligation to improve accuracy of registration data was rejected** (10 September 2023) in light of:
 - ICANN org’s ability to pursue “*accuracy of registration data according to the provisions included in the RA and RAA, and that at present extensive checks are conducted to verify the accuracy of registration data.*”
 - The Recommendation seeking “*the enforcement of specific compliance requirements (i.e., address fields) regarding data accuracy that are not part of the current registry and registrar contractual framework.*”
 - The Recommendation calling for “*work or outcomes that would require the Board to unilaterally modify ICANN's agreements with registries and registrars, or that would be contingent on community work. Changes to contracted party agreements would be a matter of policy or a result of voluntary negotiations between ICANN org and contracted parties.*”
 - “*ongoing community discussions on registration accuracy*”.

Reminder on the status of other policy issues, policy development and policy implementation processes 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.
 - **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)
 - In light of the expected roll out of a pilot Registration Data Request Service (RDRS), the **ICANN Board [confirmed](#)** (9 June 2022) its agreement with the GNSO and **decision to pause the consideration of the EPDP Phase 2 policy recommendations.**

- **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), a subsequent ICANN [Board resolution](#) (10 March 2023) directing their implementation and recent clarification by ICANN org that *“it will ultimately be up to the technical community to determine [whether] a field will be created to distinguish between legal and natural persons.”*
 - 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**”* underscoring *“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** *“considers [...] 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.
 - In the [GAC Comments](#) on the proposed Draft Registration Data Consensus Policy for gTLD (21 November 2022), **the GAC expressed public policy concerns in connection with the implementation of EPDP Phase 1 recommendations without those of Phase 2A**, resulting in a partial system and a policy gap. In response, ICANN org reached out to the GAC Small Group on WHOIS/EPDP with a [memo](#) (5 May 2023) which clarified, inter alia, that *“it will ultimately be up to the technical community to determine [whether] a field will be created to distinguish between legal and natural persons”*

- **Privacy/Proxy Services Accreditation (PPSAI) Policy Implementation and related issues**

- As of 15 September 2023, the PPSAI Implementation remains [on hold](#) with ICANN org planning to *“allocate resources and finalize a timeline to continue the implementation of PPSAI once the implementation of EPDP Phase 1 is finalized and the design criteria of the EPDP Phase 2 SSAD and Whois Disclosure System are sufficiently stable so that org and the community can identify what synergies can be leveraged with these projects and the PPSAI implementation.”*. As part of EPDP Phase 1 Implementation, in the so called [Recommendation 27 Registration Data Policy Impacts Wave 1.5 Report](#) (23 February 2021), ICANN org conducted in depth analysis of the substantial impact of the Registration Data Policy requirements on the PPSAI recommendations, and invited the GNSO to consider whether updates of the latter are needed.
- In the meantime, per the [ICANN Specific Reviews Q4 2022 Quarterly Report](#) (21 February 2023), **RDS-WHOIS2 Review Recommendation R10.1** (low priority, currently pending Board consideration¹³) for the ICANN Board **to monitor the implementation of the Privacy Proxy Services Accreditation (PPSAI) policy** recommendations, and to ensure that until it is implemented *“the underlying registration data of domain name registrations using Privacy/Proxy providers affiliated with registrars shall be verified and validated in application of the verification and validation requirements under the RAA”*, addressed in Recommendation 19 of the [EPDP Phase 2 Final Report](#) (31 July 2020), was expected to be subject to an assessment in Q1 2023 to inform Board action.
- In the recent [GAC Comments](#) (16 November 2022) on the [proposed RDAP and Bulk Registration Data Access \(BRDA\) Contractual Amendments](#) the GAC argued that **“commercial proxy services” may need “their own data element or entity role” in RDAP responses**, *“in recognition of the purposes of the RDDS system and the evolving domain name industry”* and the need to include *“all entities inherent to the registrar’s domain name registration data distribution channel”*, when they exist, in RDAP query responses.
- In the [Report of Public Comments](#) (16 December 2022), ICANN org acknowledged the GAC’s input, noting that:
 - *The proposed RDAP Profile enables the publication of data elements of which the reseller is included.*
 - *ICANN org will continue to work with the ICANN community to identify how roles and entities are represented in RDDS as part of the policy development process and will work with the contracted parties to update the respective agreements as policies require*
 - *Issues specific to privacy and proxy services will be managed via the implementation of privacy proxy policy recommendations*
- In the [Cancún Communiqué](#) (20 March 2023) **the GAC advised the ICANN Board:**

¹³ The status of all recommendations may be consulted in the ICANN Specific Reviews Q4 2022 Quarterly Report (published 21 Feb. 2023) starting p.28, along with further documentation at: <https://www.icann.org/resources/reviews/specific-reviews/whois>

- i. To prioritize the assessment related to the pending RDS-WHOIS2 Review Recommendation R10.1 which called for the Board to monitor the implementation of the PPSAI policy recommendations, and all necessary steps to resume this implementation, consistent with the intent of the GAC's previous advice.*
 - ii. To regularly update the GAC on the status of activities related to privacy and proxy services.*
- This advice was discussed during the [Board/GAC Clarification call](#) (11 April 2023) and eventually accepted by the ICANN Board as reported in the [Scorecard of Board Action](#) regarding the Cancún Communiqué (15 May 2023) which noted, at it relates to (i), that *“the assessment is in progress within the org”*.
- In the meantime, the [ICANN Specific Reviews Q1 2023 Quarterly Report](#) (31 March 2023) clarified that *“Recommendation 10.1 aims to provide better data quality and contactability of the underlying contact owner for registrations using affiliated Privacy or Proxy services by requiring registrars to verify and validate the underlying registration data of domain name registrations.”* and stated:
 - *Following further review, the 2013 Registrar Accreditation Agreement (RAA) already includes requirements for registrars to validate and verify registrant contact data of privacy services.*
 - ***ICANN org plans to resume the implementation of Privacy and Proxy Services Accreditation Implementation (PPSAI), which will provide additional explicit requirements to verify and validate registrant contact data of both Privacy and Proxy Services, once the EPDP Phase 1 implementation is completed.***
- The [ICANN Specific Reviews Q2 2023 Quarterly Report](#) (30 June 2023) stated:
“In Q2 2023, ICANN org produced an impact assessment of the outcomes of ongoing community work to inform Board consideration of RDS-WHOIS2 Recommendation 10.1 by end of calendar year”.

- **Publication of Reseller information in domain registration data**

- The CCT Review [Final Report](#) (8 September 2018) recommended per **Recommendation 17** that ***“ICANN should collect data about and publicize the chain of parties responsible for gTLD domain name registrations”*** which the ICANN Board [accepted](#) (1 March 2019) since *“reseller information is already displayed within the publicly available WHOIS, reliant upon all contracted parties complying with ICANN Consensus Policies and contractual obligations to provide such data”*
- In [GAC Comments on the Final Report and Recommendations of the CCT Review Team](#) (11 December 2018) the GAC endorsed this recommendation, as part of a set of recommendations encouraging the collection of data to ***“allow for more informed decision and policy making, particularly with regard to future standard registry and registrar contract provisions and any subsequent rounds of gTLDs.”***
- In [GAC Comments](#) (21 October 2019) on the [CCT Review Team Accepted Recommendations - Plan for Implementation and Next Steps](#) (11 Sep. 2019), the GAC noted that *“[a]lthough the ICANN Board accepted this recommendation, the proposed implementation plan is not robust. [...] ICANN should take a more active role in educating the community about why this information is necessary in order to track and publish information about DNS Abuse, and spearhead community discussions directed to requiring contracted parties to collect and publish this information in order to promote increased transparency and accountability.”*
- In its [Final Implementation Report](#) (14 September 2022), ICANN org noted that CTT Review **Recommendation 17** ***“has been implemented to the extent possible consistent with current policy requirements”*** and that ***“no further action is required”***. In particular, it referred to the [Advisory: Clarifications to the Registry Agreement, and the 2013 Registrar Accreditation Agreement \(RAA\) regarding applicable Registration Data Directory Service \(Whois\) Specifications](#), published on 12 September 2014 and noted that the Reseller field is *“optional and should be treated as described in the Advisory”*. It in fact a subsequent Advisory, which superseded the previous version, the [Advisory: Clarifications to the Registry and Registrar Requirements for WHOIS \(port 43\) and Web-Based Directory Services](#) published on 27 April 2015 and last updated on 25 May 2018, which states:

50. The value section of the “Reseller” field SHOULD be shown, but MAY be left blank or the whole field MAY not be shown at all. If shown, the value of the field MUST be the name of organization, in case the Reseller for the name is a legal entity, or a natural person name otherwise.
- In the context of the phasing out of the WHOIS protocol and its replacement by the Registration Data Access Protocol, in [GAC Comments on the proposed Registration Data Access Protocol \(RDAP\) and Bulk Registration Data Access \(BRDA\) Contractual Amendments](#) (16 November 2022), the GAC noted that the [RDAP Response Profile](#) provides that *“the returned domain object in the RDAP response MAY contain an entity with the reseller role, if the domain name was registered through a reseller.”* It further stressed that *“In recognition of the purposes of the RDDS system and the evolving domain*

name industry, the GAC supports the inclusion of all entities inherent to the registrar's domain name registration data distribution channel. Such entities should be included in an RDAP query response, when they exist."

- In response, in its [Public Comment Summary Report](#) (16 December 2022), ICANN org acknowledged the GAC's comment and noted *"that ICANN org will continue to work with the ICANN community to identify how roles and entities are represented in RDDS as part of the policy development process and will work with the contracted parties to update the respective agreements as policies require."*
- As part of a [Public Comment proceeding on the proposed draft Registration Data Consensus Policy](#), in a [GAC Comment on the Draft Registration Data Consensus Policy for gTLDs](#) (21 November 2022), the GAC suggested that instead of "6.4 Registrar MAY generate the Reseller data element value." the policy should read "6.4 Registrar SHOULD generate the Reseller data element value, for the Reseller with a direct relationship with the Registrant." The GAC observed that *"the domain name industry has evolved considerably since ICANN's inception, and today includes roles and entities which may not have existed in previous RDDS systems; similarly, new entities may be created tomorrow which have yet to be conceived of today. In recognition of this, the GAC supports the inclusion of corporate entities inherent to the registrar's distribution channel (such as the RDAP Response Profile entity 2.5 enumerating the "reseller" role) as it is the purpose of the RDDS system to enumerate roles and responsibilities relevant to domain name registrations; such entities should be included in an RDAP response, when they exist. This would also prove as a benefit in highlighting the best point of contact to deal with notifications of abuse or compromise to the party with the ability to act the quickest or most appropriately"*.
- In its Review of Public Comments (28 April 2023) as appended to the original [Public Comment Summary Report](#) (20 January 2023) [see after p.39], ICANN org stated:

"After careful consideration of the public comments received, the IPT determined that additional changes should not be made to the policy language pertaining to the requirements related to the reseller field. There is no indication that the draft policy was drafted incorrectly, and the EPDP Phase 1 team determined that the collection, transfer, and publication of the reseller field remain optional. The draft policy language maintains the status quo as org recognizes that current business practices allow for the optional collection, transfer, and publication of the reseller field. Thus, the IPT believes that making any recommended changes is beyond the scope of the policy as it would create additional changes that are not required by the EPDP Phase 1 recommendations.

Key Reference Documents

- [GAC Chair letter to the ICANN Board Chair](#) (23 August 2023) on the timeline for response to Urgent Request in the [proposed Final Registration Data Consensus Policy](#) (24 July 2023).
- [GAC Washington D.C. Communiqué](#) (20 June 2023) Follow up on Previous GAC Advice on Privacy Proxy Services; and Issues of Importance in the on the Registration Data Consensus Accuracy, the RDDS and the Registration Data Consensus Policy, as well as:
 - [Scorecard of Board Action](#) regarding Advice the D.C. Communiqué (10 Sep. 2023)
 - [ICANN Board Comments on the Issues of Importance](#) (18 September 2023)
- [ICANN org Review of Public Comment](#) (28 April 2023) - starting p.40 - on the [Draft Registration Data Consensus Policy for gTLDs](#) (24 August 2022)
- GAC Advice in the ICANN76 [Cancún Communiqué](#) (20 March 2023) on Privacy/Proxy Services, and the related
 - [Summary Notes](#) of the Board/GAC Clarification Call (11 April 2023)
 - [Scorecard of Board Action](#) regarding Advice the GAC Cancún Communiqué
- [ICANN Org Correspondence to the GNSO Council](#) regarding the Registration Data Accuracy Scoping Team (14 March 2023)
- [GAC Comments](#) (21 November 2022) on the [Draft Registration Data Consensus Policy for gTLDs](#) (24 August 2022)
- [Addendum](#) (7 Nov. 2022) to the SSAD ODA Small Team [Preliminary Report](#) (4 April 2022) regarding requirements for an SSAD proof of concept.
- [WHOIS Disclosure System ICANN Design Paper](#) (13 Sep. 2022)
- Accuracy Scoping Team [preliminary recommendations](#) to the GNSO Council (2 Sep. 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 Sep. 2021) on EPDP Phase 2A [Final Report](#) (3 Sep. 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.

Document Administration

Title	ICANN78 GAC Session Briefing - RDS/WHOIS and Data Protection Policy
Distribution	GAC Members (before meeting) and Public (after meeting)
Distribution Date	Version 1: 11 October 2023