

# RDS/WHOIS and Data Protection Policy

Laureen Kapin (US FTC)  
Chris Lewis-Evans (UK NCA)  
Georgios Tselentis (European Commission)

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# Agenda

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## 1. Status of Policy Development

- Status Overview of EPDP Process
- GNSO Adopted Recommendations for a Standardized System for Access and Disclosure (SSAD)
- GAC and Other Stakeholders' Concerns

## 2. Next Steps

- Overall Timeline
- Board Deliberations
- Phase 2a (Natural Legal, Unique Anonymized Contacts)
- Accuracy of gTLD Registration Data

# Overview of Expedited Policy Development Process (EPDP)

## Expedited Policy Development Process (EPDP) on gTLD Registration Data

- Launched as part of emergency measures, to replace the [Temporary Specification](#) (17 May 2018) now incorporated as the [Interim gTLD Registration Data Policy](#)
- [Phase 1](#) (Aug. 2018 - Feb. 2019)
  - Laid out foundation of new policy framework (purposes, data elements, etc.)
  - Sufficient basis to proceed (GAC [letter](#) to ICANN Board, 24 April 2019)
  - Most Policy Recommendations [adopted](#) by ICANN Board (15 May 2019)
- [Phase 1 Implementation](#) (ongoing)
  - Interim Registration Data Policy (20 May 2019) extended Temporary Specification
  - Completion date still uncertain (ICANN org [letter](#) to the GAC, 6 Jan. 2020)
- [Phase 2](#) (May 2019 - Jul. 2020)
  - Focus on a System for Standardized Access/Disclosure (SSAD)
  - [Final Report](#) Published on 30 July 2020
  - GAC submitted a [Minority Statement](#) (24 August 2020), along with ALAC, BC, IPC, SSAC (Annex E of Final Report)
  - GNSO Council [adopted](#) (24 September 2020) the policy recommendations for eventual ICANN Board consideration

# Adopted Recommendations for an SSAD (EPDP Phase 2)

#1	Accreditation	Full Consensus
#2	Accreditation of Governmental Entities	Full Consensus
#3	Criteria and Content of Requests	Full Consensus
#4	Acknowledgement of receipt	Full Consensus
#5	Response Requirements	Strong support but significant opposition
#6	Priority Levels	Divergence
#7	Requestor Purposes	Consensus
#8	Contracted Party Authorization	Strong support but significant opposition
#9	Automation of SSAD Processing	Strong support but significant opposition
#10	Determining variable SLAs for response times for SSAD	Strong support but significant opposition

#11	SSAD Terms and Conditions	Full Consensus
#12	Disclosure Requirements	Strong support but significant opposition
#13	Query Policy	Full Consensus
#14	Financial Sustainability	Divergence
#15	Logging	Full Consensus
#16	Audits	Full Consensus
#17	Reporting Requirements	Full Consensus
#18	Review of Implementation of recommendations concerning SSAD using a GNSO Standing Committee	Strong support but significant opposition
#19	Display of information of affiliated privacy / proxy providers	Full Consensus
#20	City Field	Consensus
#21	Data Retention	Full Consensus
#22	Purpose 2	Consensus

## Consensus on Accreditation, Purposes and Centralization of Requests

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**Non-consensus on De-Centralized and Non-Automated Disclosure, Funding Arrangements and Requirement of Future Policy Development for Automation and Centralization of Disclosures**

# GAC Concerns with Adopted Recommendations

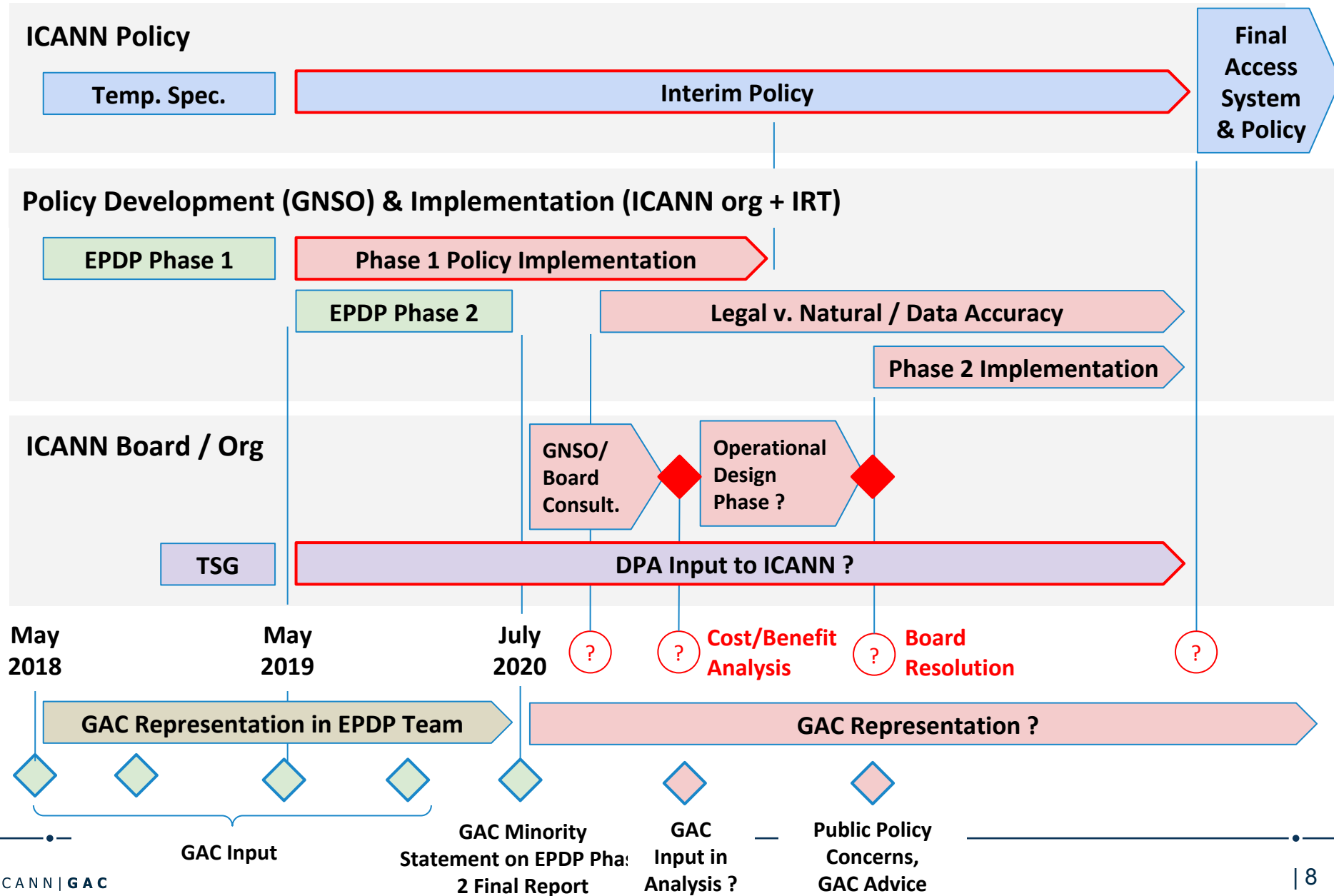
- Per [GNSO Operating Rules and Procedures](#), “minority viewpoints” are encouraged to be submitted in cases of divergence in a PDP Working Group. These usually take the form of “Minority Statements”. They have no formal influence on subsequent deliberation of the GNSO Council.
- In the [GAC Minority Statement](#) (24 August 2020), the GAC
  - provided “*input on its public policy concerns*” in the way in which the recommendations:
    - *Currently conclude with a **fragmented rather than centralized disclosure system**,*
    - *Do not currently contain enforceable **standards to review disclosure decisions**,*
    - *Do not sufficiently address **consumer protection** and consumer trust concerns;*
    - *Do not currently contain reliable **mechanisms for the System for Standardized Access/Disclosure (SSAD) to evolve** in response to increased legal clarity; and*
    - *May impose financial conditions that risk an SSAD that calls for **disproportionate costs for its users** including those that detect and act on cyber security threats.*
  - highlighted key issues not addressed (consistent with earlier [GAC Comments](#))
    - data accuracy,
    - masking of data from legal entities not protected under the GDPR,
    - use of anonymised emails
  - Called for further clarification of the status and role of each of the data controllers and processors

# Other Stakeholders Concerns

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- **Representative of prospective users of an SSAD and Internet Users** have expressed similar and additional concerns:
  - The At-Large Advisory Committee (**ALAC**), the Security and Stability Advisory Committee (**SSAC**) and both GNSO's Business and Intellectual Property Constituencies (**BC and IPC**) submitted Minority Statements (Annex E of EPDP Phase 2 [Final Report](#))
- **The IPC and BC voted against the GNSO Council's adoption** of the SSAD policy recommendations (and provided related statements: [IPC](#), [BC](#)). They were overruled by a "supermajority" vote in favor of the recommendation by Registries, Registrars, Non-Commercial and ISP stakeholders.
- In [Statements to the GNSO Council](#) upon its 24 September 2020 vote adopting the policy recommendations, **ALAC expressed concerns with non-consensus policy recommendations being recommended to the ICANN Board**
  - [GNSO Operating Rules and Procedures](#) state (Annex 2, Section 13. Council Deliberation, p.74):  
*"In the event that the Final Report includes recommendations that did not achieve the consensus within the PDP Team, the GNSO Council should deliberate on whether to adopt them or remand the recommendations for further analysis and work"*

# Next Steps: Timeline to Access/Disclosure System





# Next Steps

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1. **Consultation between the ICANN Board and GNSO Council, including a possible Cost/Benefit Analysis of the SSAD policy recommendations**
    - Per GNSO Resolution (24 September 2020): *“Noting some of the questions surrounding the financial sustainability of SSAD and some of the concerns expressed within the different minority statements, **the GNSO Council requests a consultation with the ICANN Board as part of the delivery of the GNSO Council Recommendations Report to the ICANN Board to discuss these issues, including whether a further cost-benefit analysis should be conducted before the ICANN Board considers all SSAD-related recommendations for adoption.**”*
    - The GAC may wish to obtain more information regarding this analysis, particularly how the **cost-benefit will be measured and whether SG’s will contribute to this analysis**
  
  2. **ICANN Board consideration of the policy Recommendations, possibly after a proposed Operational Design**
    - The GAC is expected to provide **feedback on the proposed Operational Design Phase**
    - The GAC will be asked by the ICANN Board to share with the ICANN Board any **public policy concern and GAC Advice** as appropriate
  
  3. **Implementation of EPDP Phase 2 Recommendation**
    - GAC representatives will be invited to **participate in the Implementation Review Team** when initiated
- In parallel, further Policy Work in the GNSO is expected to be initiated shortly:**
- The EPDP expected to be reconvened in a new and shorter phase (Phase 2a) to address Legal vs. Natural and Unique anonymized contacts. GAC will be invited to **participate**.
  - A separate issue scoping effort is to be initiated regarding Data Accuracy, before the initiation of a new PDP could be discussed in the future.



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**Do you have a question or concern for the ICANN Ombudsman?**

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