

# RDS/WHOIS and Data Protection Policy

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**ICANN | G A C**

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# Agenda

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## 1. Effective and compliant gTLD Registration Data Services

- Importance to GAC
- Current Concerns
- Possible Next Steps for the GAC

## 2. Accuracy of gTLD Registration Data

- Developments since ICANN71
- Review of GNSO Council instructions

# WHOIS and Data Protection: Importance to the GAC

## Why this is important for the GAC

Per the [GAC Principles Regarding gTLD WHOIS Services](#) (28 March 2007), recalled in the [GAC Abu Dhabi Communiqué](#) (1 Nov. 2017), the GAC noted they “continue to reflect the important public policy issues associated with WHOIS services” including that “WHOIS data [...] is used for a number of legitimate activities, including:

1. *Assisting law enforcement authorities in **investigations and in enforcing national and international laws**, assisting in **combatting against abusive use** of internet communication technologies;*
2. *Assisting businesses, other organizations, and users in **combatting fraud, complying with relevant laws, and safeguarding the interests of the public**;*
3. *Combatting **infringement and misuse of intellectual property**; and*
4. ***Contributing to user confidence in the Internet** as a reliable and efficient means of information and communication by helping users identify persons or entities responsible for content and services online.”*

## And still relevant when considering compliance with Data Protection Law

The GAC advised the ICANN Board “it should use its best efforts to create a system that continues to facilitate the legitimate activities recognized in the 2007 Principles, including by:

1. ***Keeping WHOIS quickly accessible for security and stability purposes**, for consumer protection and law enforcement investigations, and for crime prevention efforts, through user-friendly and easy access to comprehensive information to facilitate timely action.*
2. ***Keeping WHOIS quickly accessible to the public** (including businesses and other organizations) for legitimate purposes, including to combat fraud and deceptive conduct, to combat infringement and misuse of intellectual property, and to engage in due diligence for online transactions and communications”*

# WHOIS and Data Protection: GAC Concerns

## EPDP Phase 2: System for Standardized Access/Disclosure (SSAD)

- 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.*

## EPDP Phase 2A: Distinction of registration data from legal vs. natural persons

- In the [GAC 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 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 [...]*”

# Registration Data Services (WHOIS/RDS)

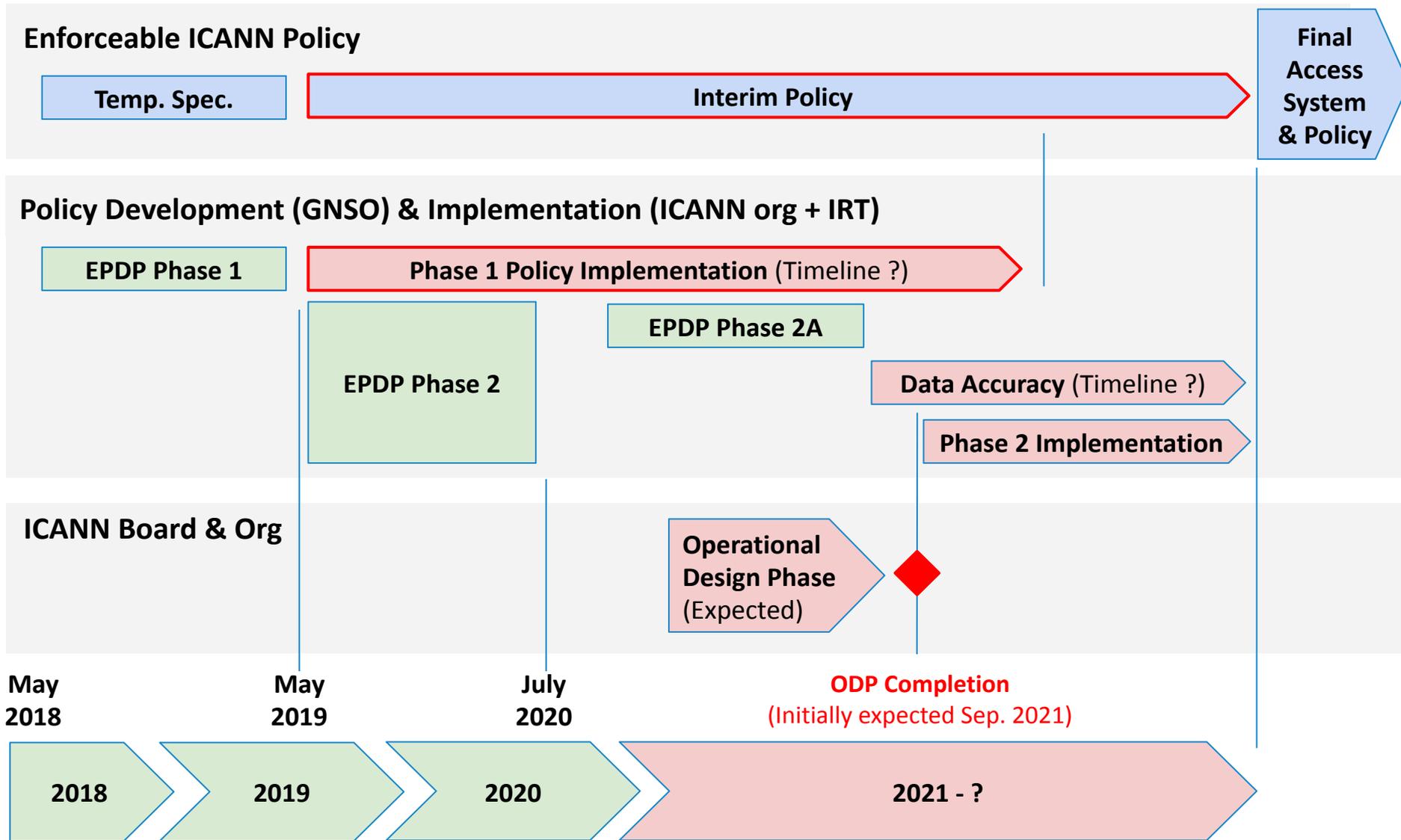
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## Current Concerns

### Absence of timelines in relevant ICANN processes

- **EPDP Phase 1 Implementation** started in May 2019, and has no completion estimate (GAC Advice in the [Montreal](#) and [ICANN71 Communiqué](#))
- **EPDP Phase 2** completed in July 2020. **ICANN org SSAD ODP** was expected to conclude in September 2021. Board still has not considered the policy recommendations. Implementation likely to be as challenging as that of Phase 1
- **EPDP Phase 2A recommendations** still held in GNSO for voting.

# Registration Data Services: Timeline to New Regime



# Registration Data Services (WHOIS/RDS)

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### Problematic Policy Outcomes

- Fragmented system for disclosure under **Interim Registration Data Policy**, continuation of Temporary Specification ([GAC Barcelona Communiqué](#) and [response to ICANN Board on public policy concerns regarding EPDP Phase 1](#))
- Implementation of **Privacy Proxy Services Accreditation** suspended, and still not resumed ([GAC Kobe Communiqué](#))
- **EPDP Phase 2** SSAD Policy Recommendations did not include centralized and automated disclosure for legitimate requests and does not provide an effective mechanism for evolution towards these goals ([GAC Minority Statement](#) on EPDP Phase 2)
- No more visibility and proactive **monitoring of accuracy of registration data** with suspension of ICANN Accuracy Reporting System due to ICANN's inability to access gTLD Registration data

# Registration Data Services (WHOIS/RDS)

## Possible Next Steps for the GAC

- **Respond to the [SSAD ODP Survey](#)** (deadline extended to 31 October)
  - Focus on designation of accreditation authority questions
  - ***Answer what you can***
  - Share feedback on obstacles to responding to the survey
- **Follow-up on delivery of the ODP and eventual ICANN Board consideration of the EPDP Phase 2 SSAD policy recommendations**, in particular as it relates to financial sustainability and evolution towards centralization and automation
- **Consider recent SSAC recommendations to the GNSO and ICANN org** (in [SAC118](#)) to “*focus their attention on building and operating an effective differentiated access system*” that must:
  - come into operation soon
  - be reliable, predictable and consistent
  - provide results that are of benefits to requesters
  - provide responses to legitimate requests quickly and at acceptable costs
- **Follow-up with ICANN Board** on:
  - [Montreal Communiqué Advice](#) (Instruct the ICANN organization to ensure that the current system that requires “reasonable access” to non-public domain name registration is operating effectively by: educating key stakeholder groups, including governments, that there is a process to request non-public data; actively making available links to registrar and registry information and points of contact on this topic)
  - and [ICANN71 GAC Advice for Timeline of EPDP Phase 1 Implementation](#)

# Accuracy of Registration Data

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## Developments since ICANN71

- o Small GNSO group formed to launch the scoping work (scope, timing, team composition)
- o Accuracy scoping team in place and had its first meeting on the 5<sup>th</sup> of October
- o Two GAC representatives - US and EC
- o Current target for completion of the scoping work: end August 2021

## Four tasks assigned by the GNSO Council (see [GNSO Council instructions](#))

- Assess accuracy obligations currently in place
  - identify whether can be an agreed definition of accuracy
- Provide recommendations on accuracy measurement
- Assess whether the contractual data accuracy obligations are effective at ensuring that Registered Name Holders provide “accurate and reliable” contact information
- Impact and Improvements:
  - assess whether any changes are recommended to improve accuracy levels,
  - and if so, recommend to the GNSO Council how and by whom these changes would need to be developed



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