

# RDS/WHOIS and Data Protection Policy

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# Agenda

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## 1. Importance of Domain Name Registration Data

## 2. Domain Name Registration Data Policy Efforts

- Phases 1, 2, 2a, Accuracy Scoping
- Timelines
- GAC Concerns

## 3. Recent Developments

- Operational Design Assessment
- Accuracy Scoping Team

## 4. ICANN 73 Objectives

# WHOIS and Data Protection: Importance to the GAC

## Why this is important for the GAC

*“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 **combating against abusive use** of internet communication technologies;*
- 2. Assisting businesses, other organizations, and users in **combating 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.”*

Quoting [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”*

## 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:*

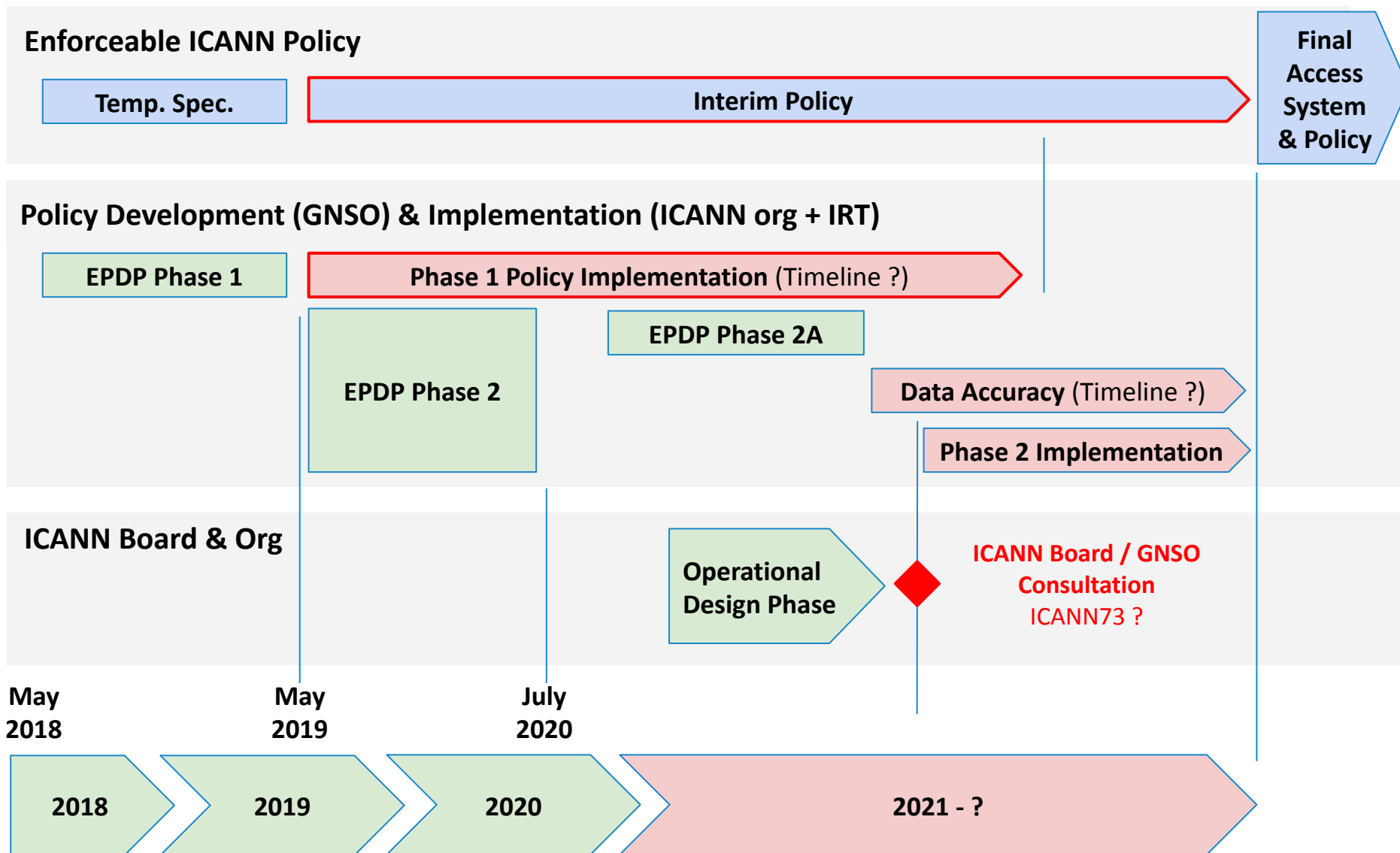
- 1. **Keeping WHOIS quickly accessible for security and stability purposes**, for consumer protection and law enforcement investigations, and for crime prevention efforts, through user-friendly and easy access to comprehensive information to facilitate timely action.*
- 2. **Keeping WHOIS quickly accessible 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: Background

## Background on Efforts to Define a New Policy Regime for Registration Data Services

- Expedited Policy Development Process (EPDP) Launched to replace the [Temporary Specification](#) (17 May 2018) now incorporated as the [Interim gTLD Registration Data Policy](#) (20 May 2019) which the GAC stressed “*created a fragmented system for providing access*” in the [Barcelona Communiqué](#) (25 Oct. 2018) and [letter to the ICANN Board](#) (24 April 2019)
- **EPDP Phase 1** (Aug. 2018 - Feb. 2019)
  - Foundation of new policy framework (purposes, data elements, etc.). Mostly [adopted](#) by ICANN Board (May ‘19)
- **EPDP Phase 1 Implementation** (May 2019 - ongoing)
  - Schedule requested per Advice in [Montreal Communiqué](#), and Follow-up in [ICANN71](#), [ICANN72](#) Communiqués
  - ICANN Board listed the remaining milestones in Scorecard on ICANN72 GAC Advice (16 Jan. 2022)
- **EPDP Phase 2 - System for Standardized Access/Disclosure (SSAD)** (May 2019 - Jul. 2020)
  - [Final Report](#) published on 30 July 2020. GAC submitted a [Minority Statement](#) (24 August 2020)
  - GAC Advice in the [ICANN70 Communiqué](#) (25 Mar. 2021) and [response to Board Clarification Questions](#) (6 Oct.)
- **SSAD Operational Design Phase** (Mar. 2021 - Jan. 2022)
  - ICANN Board [directed](#) ICANN to conduct an Operational Assessment of the GNSO Recommendations (25 Mar. ‘21)
  - ICANN org delivered its [Operational Design Assessment](#) (25 Jan. 2022) now subject to Board/GNSO consultation.
- **EPDP Phase 2A** (Dec. 2020 - Sep. 2021)
  - Focus on treatment of data from legal (vs. natural) entities and pseudonymized emails: [Final Report](#) (3 Sep. 2020)
  - GAC submitted a [Minority Statement](#) (10 Sep. 2021) and [requested its consideration by the Board](#) (9 Feb. 2022)
- **Registration Data Accuracy Scoping Team for potential GNSO Policy Development** (Oct. 2021 - ongoing)
  - Accurate registration data is important to the prevention and mitigation of DNS abuse (ICANN72 Communiqué)
  - The GAC stressed the importance of delivering on all four tasks in a timely and effective manner.

# WHOIS and Data Protection: Timeline to New Regime



# 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;*
- 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 [...]*”

# WHOIS and Data Protection: SSAD Operational Design

Findings of ICANN's Operational Design Assessment as presented to the GAC (16 Feb. 2022)

## 3-4 Years to Develop SSAD

3-4 years of development

- Selection of vendors
- Vendor ramp-up
- System development
- Legal instrument development
- Communications plan and support

Unknown duration of IRT

- Potentially 2 yrs based on experience
- Development and confirmation of requirements
- Policy document development

System development and IRT work is conducted in parallel to the extent possible.

## Complexity

- 8 types of Actors
- 8 Subsystems
- 60 Processes

## Approx. \$20M - \$27M to Develop

- System development outsourced

## Approx. \$14M - \$107M for Annual Ongoing Operations

- Ongoing operations outsourced
- User accreditation volume drives cost
- ICANN org oversees ongoing operations, vendors, etc.
- 7 functions to fill through RFPs

## SSAD Fee Structure

Based on full cost recovery model

Accreditations/Identity Verifications:  
**\$86 - \$21 (low - high usage)**

Requestor Declaration Verification:  
**\$190- \$160 (low - high usage)**

Disclosure Requests:  
**\$40 - \$0.45 (low - high usage)**

Fee structure based on the assumptions\* of:

- 25,000 and 3 million users\*\*
- 100,000 and 12 million requests


\*Based on a variety of inputs incl. the CP and community surveys, RDDS requests, abuse rates, etc.

\*\*Requestors may still directly go to the CP, bypassing SSAD entirely. This may impact request volumes, if potential Requestors see the SSAD as too onerous.

# WHOIS and Data Protection: SSAD Operational Design

## Open Questions/Uncertainties:

- **Costs** - expansive cost range for
  - development and implementation (\$20-\$27 million) and
  - operations (\$14 to \$106 million) because “projected volumes for accreditation identification requests and Requester declaration verifications are uncertain.” P. 9
- **Usage** - General Assumptions
  - between “25,000 and 3 million users” and
  - between “100,000 and 12 million requests per year.” P.15
- **Impact of Privacy Proxy Services protections on usage**
  - contact data pertaining to the beneficial user of domains protected by privacy/proxy services cannot be requested via the SSAD
  - ODA’s assumption about 30% of registered domain names using a privacy/proxy service may be conservative and that “this may call into question the estimates of volume, accreditation, usage, and renewal.” P.19
- **Impact of restrictions on the transfer of domain name registration data across borders**
  - not clear whether the ODA factored these restrictions into its usage estimates;
  - If requesters are only able to obtain data from their own jurisdictions, that may significantly reduce usage

Taken together  raises questions about ability to accurately predict costs based on usage



# WHOIS and Data Protection: SSAD Operational Design

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## Public Policy Concerns with Assessment to Date

- Role of Governmental Accreditation Authorities goes beyond the scope envisioned in [GAC Principles on Accreditation](#) (21 Jan. 2020). The GAC [alerted the GNSO](#) (15 December 2021) that ICANN's proposed design goes beyond the scope envisioned in [GAC Principles on Accreditation](#) (21 Jan. 2020) which were incorporated in Recommendation 2 of the EPDP Phase 2

## Next Steps

- **A GNSO Small Team** is reviewing ICANN org's Assessment with a view to support GNSO Council consultation with the ICANN Board, including addressing questions and concerns expressed in a [ICANN Board letter](#) (24 Jan. 2022)
- The **GNSO Council** may determine to revise or reaffirm its policy recommendations in light of ICANN org's assessment
- Members of the community are considering **alternative approaches** which could alleviate some of challenges and risks identified in ICANN org's assessment including:
  - Conducting a pilot program to demonstrate the value and demand for an SSAD
  - A phased-approach to the implementation of an SSAD
  - The definition of a Code of conduct as envisioned in the GDPR

# WHOIS and Data Protection: Focus on Data Accuracy

## Status of Scoping Team Work

- In the [ICANN72 GAC Communiqué](#), the GAC expressed support for the GNSO Scoping Team's assignments:
  - i) enforcement and reporting,
  - ii) measurement of accuracy,
  - iii) effectiveness and
  - iv) impact and improvement
- Some stakeholders argue that no reliable data exist to demonstrate significant issues with registration data accuracy
- ICANN org reported on numerous [challenges preventing resuming the WHOIS Accuracy Reporting System](#) (Jan. 2022) which was paused with the entry into force of the GDPR and ICANN's Temporary Specification.
- **GAC input on assignments:**

The scoping Team has been conducting a gap analysis of stakeholders expectations vs. existing contractual requirements and their enforcement. The scoping Team has also collected input on how and by whom accuracy can be measured.

## Expected Next Steps

- The scoping team is currently discussing possible parameters for a study on registration data accuracy. Such a study could impact the timeline to deliver recommendations for a GNSO Policy Development Process (PDP)
- Stakeholder Groups are expected to provide input on a working definition of Accuracy

## GAC Question to ICANN Board during ICANN73 (Reminder)

- What is the Status of the negotiation of Data Protection Agreements between ICANN and the Contracted Parties?
- Is ICANN able to access registration data under the GDPR on the basis that it has a legitimate interest in checking the accuracy of the data? Has ICANN ever received or plans to receive legal advice on the topic?

# WHOIS and Data Protection

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## ICANN73 Objectives

- **Assess the public interest impacts of the current interim policy regime** for gTLD registration data, in light of:
  - a. **Prospects of implementation and community concerns with policy recommendations** in Phase 1, Phase 2 and Phase 2A of the Expedited Policy Development Process (EPDP) on gTLD Registration Data;
  - b. **Suspension of pre-existing implementations efforts** such as Thick WHOIS Transition Policy, Privacy/Proxy Accreditation Policy and the WHOIS Accuracy Reporting System (ARS)
  - c. **Board responses to the GAC Montréal Advice** (1 Nov. 2019), and subsequent Follow-up in the ICANN72 Communiqué (1 Nov. 2021), to *“ensure that the current system that requires ‘reasonable access’ to non-public domain name registration is operating effectively”*

## Potential ICANN73 GAC Communiqué Issues and Text

- Some processes have not progressed far enough for further GAC Communiqué consideration
- Consider whether RDAP response for data could include link to ICANN website with instructions on how to request data
- Consider whether ICANN could request access to non-public registration data as a test case
- Consider linking GAC Montreal Advice with next steps on SSAD and a possible phased-approach to SSAD



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