WHOIS and Data Protection Policy

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<u>Guest Speaker:</u>
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ICANN83
11 June 2025

Agenda

1. **Background**

2. **Urgent Requests for Disclosure of Registration Data**

   ○ Update on Timeline Discussions

   ○ Update on LEA Authentication Mechanisms

3. **Registration Data Request Service (RDRS) Updates**

   ○ GNSO Standing Committee Report Drafting

   ○ Future of the EPDP Phase 2 SSAD Recommendations

4. **Accuracy of Registration Data**

5. **GAC Prague Communiqué Consideration**

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:*
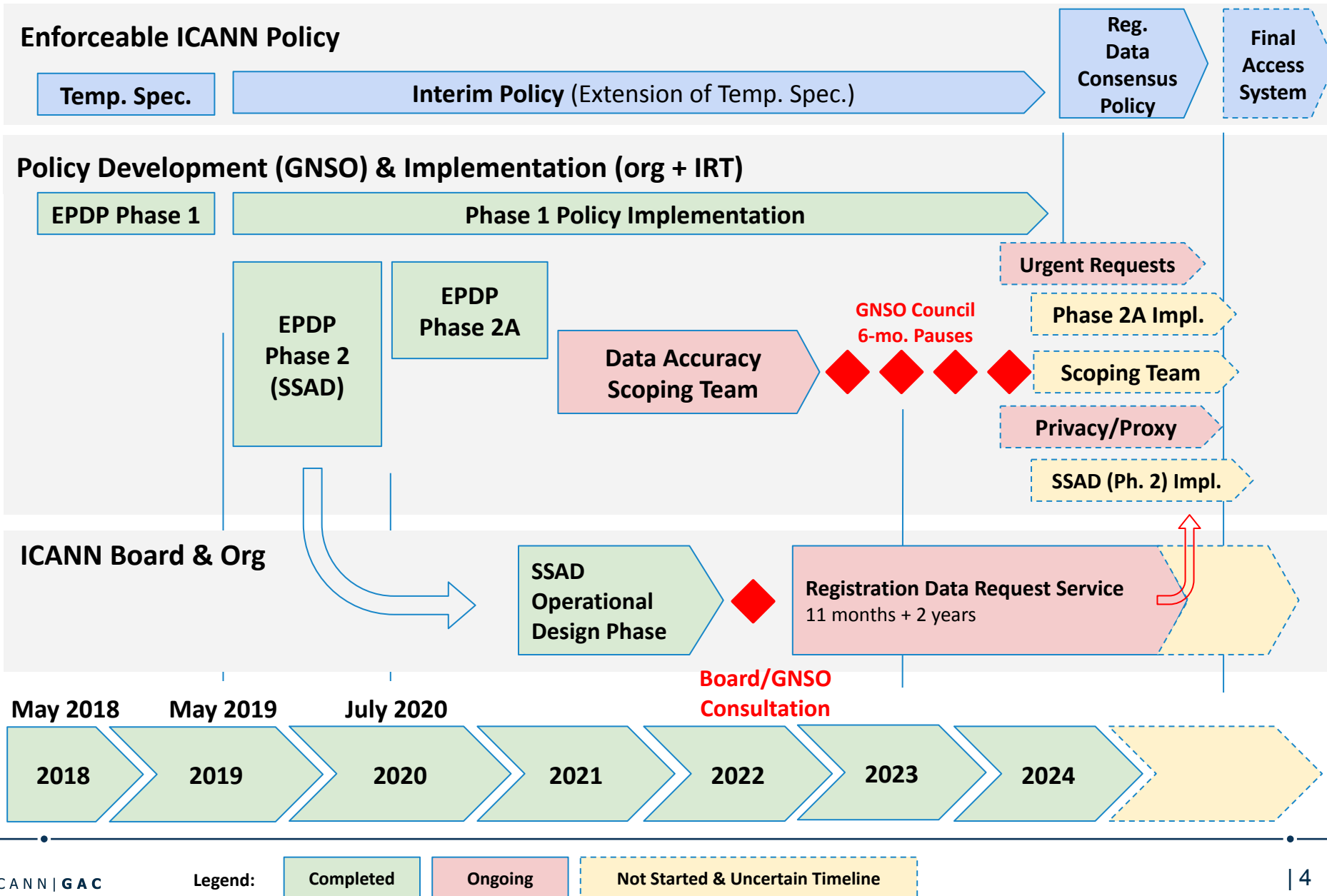
1. *Assisting law enforcement authorities in **investigations and in enforcing national and international laws**, assisting in **combating against abusive use** of internet communication technologies;*

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."*

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: Timeline to New Framework

Enforceable ICANN Policy

Temp. Spec. | Interim Policy (Extension of Temp. Spec.) | Reg. Data Consensus Policy | Final Access System

Policy Development (GNSO) & Implementation (org + IRT)

EPDP Phase 1 | Phase 1 Policy Implementation

EPDP Phase 2 (SSAD) | EPDP Phase 2A | Data Accuracy Scoping Team

GNSO Council 6-mo. Pauses

Urgent Requests

Phase 2A Impl.

Scoping Team

Privacy/Proxy

SSAD (Ph. 2) Impl.

ICANN Board & Org

SSAD Operational Design Phase | Registration Data Request Service 11 months + 2 years

Board/GNSO Consultation

May 2018 | May 2019 | July 2020

2018 | 2019 | 2020 | 2021 | 2022 | 2023 | 2024

Legend: Completed | Ongoing | Not Started & Uncertain Timeline

Urgent Requests for Disclosure of Registration Data

Urgent Requests for Disclosure of Registration Data

Part of the Board-approved EPDP Phase 1 Policy Recommendations (Recommendation 18),
removed from the resulting Registration Data Consensus Policy (EPDP Phase 1 Implementation)

EPDP Team Recommendation #18.

- A separate timeline of [less than X business days] will considered for the response to 'Urgent' Reasonable Disclosure Requests, those Requests for which evidence is supplied to show an immediate need for disclosure [time frame to be finalized and criteria set for Urgent requests during implementation].

- **Agreeing on a timeline for response to Urgent Requests for disclosure of registration data** in *"circumstances that pose an imminent threat to life, serious bodily injury, critical infrastructure, or child exploitation"* **proved unattainable** in the policy implementation process.

- **The GAC provided input** at several stages of policy development and implementation, and last in a letter to the ICANN Board (23 Aug. 2023) requesting a careful review of the proposed timeline for response to Urgent Requests.

- In its response to the GAC (11 Feb. 2024) **the ICANN Board** "*concluded that it is necessary to revisit Policy Recommendation 18 concerning urgent requests [...] and the manner in which such emergencies are currently handled",* indicating that "*[f]or this, we believe that consultation with the GNSO Council is required*".

- In the ICANN79 GAC San Juan Communiqué (11 March 2024), the GAC Advised the ICANN Board "*To act expeditiously to establish a clear process and a timeline for the delivery of a policy on Urgent Requests [...] to respond to the vital public safety interests related to such requests. [...].*

Urgent Requests for Disclosure of Registration Data

The ICANN Board sought GNSO Council Input on Next Steps

- In a [letter to the GNSO Council](#) (3 June 2024), **the ICANN Board welcomed "*the GNSO Council's input on next steps*"** noting that "*neither the Bylaws nor existing procedures account for the situation in which [...] the Board concludes that a policy recommendation that it has previously approved should be revisited prior to implementation*". Among its concerns, the ICANN Board noted:

    - *[...] To respond to truly imminent threats,* ***a much shorter response timeline, i.e., minutes or hours rather than days, would seem to be more appropriate****.*

    - ***Applicable law, regulation, and reasonable registrar policies will often require registrars to authenticate self-identified emergency responders*** *and confirm the purpose(s) for which registrant data is sought prior to disclosing personal data [...]*

    - *[...] an authoritative, legally sufficient cross-border* ***system for authenticating emergency responders/law enforcement globally is not available to ICANN*** *[...]*

    - *[...] such a mechanism cannot be created, operated, and/or maintained without the material, ongoing assistance of law enforcement, first responders, and governments.*

- The [GNSO Council responded to the ICANN Board](#) (29 August 2024) expressing agreement with the concerns raised by the ICANN Board and proposing to schedule "***a meeting between the ICANN Board, interested GAC and PSWG representatives, and the GNSO Council*** *[...] to discuss the concerns in detail, explore the complexities involved, and determine the most effective way to proceed*"

Urgent Requests for Disclosure of Registration Data

- The GAC proposed to the ICANN Board (15 October 2024) that **two tracks of work be conducted in parallel**:

  - **An Authentication Track** to explore possible mechanisms to authenticate law enforcement requestors

  - **A Policy Track** to determine an appropriate response time for authenticated Urgent Requests, assuming a mechanism is in place

- **The GAC's proposal was discussed** before ICANN81, during a first trilateral call between ICANN Board, GNSO Council and GAC (4 November 2024), in a GNSO Council letter to the GAC Chair (15 January 2025), and in a second trilateral call (12 February 2025).

Latest developments

- **Authentication Track**

  - Before ICANN82, the PSWG Co-Chairs initiated the formation of Practitioners Group with representatives from several "umbrella" law enforcement organizations, and from several stakeholder groups in the GNSO (RrSG, RySG, NCSG, BC).

  - This group has been meeting every two weeks after ICANN82 and will continue to meet as needed

- **Policy Track**

  - Shortly after ICANN82, ICANN org reconvened the EPDP Phase 1 IRT to determine an appropriate timeline for response to Urgent Requests. This group has met twice before ICANN83 and met for a third time yesterday
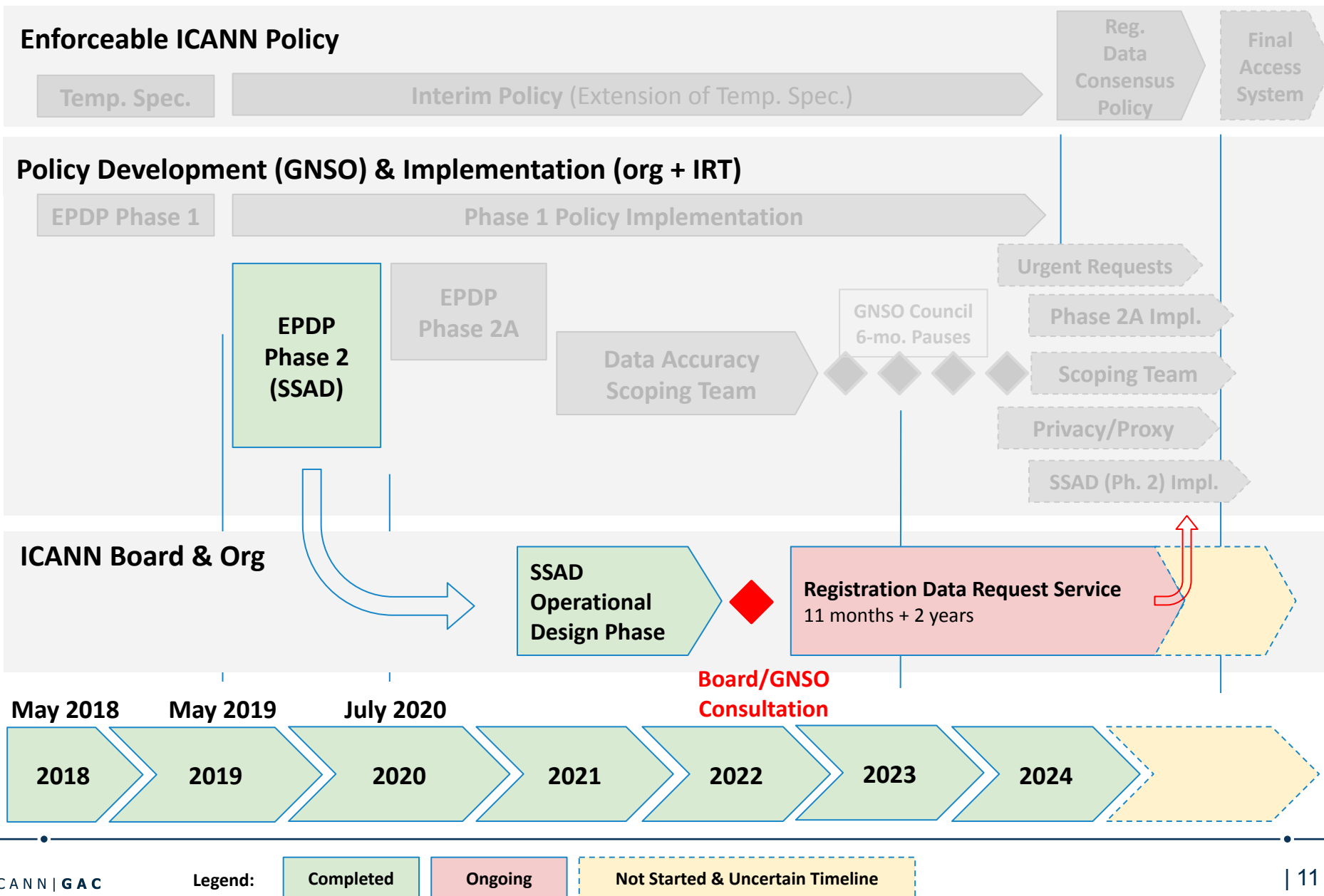
Urgent Requests for Disclosure of Registration Data

Progress Update:

- **Response Timeline (for requests that *are* authenticated)**
  - Discussion on ICANN org proposal – divergent views across the community
  - 24 hours is the current timeline on the table / no alternative proposals
  - Obstacles raised by the CPs and how they can be addressed
  - ICANN will circulate text seeking to take into account the different positions

- **Authentication of Law Enforcement Requestors**
  - Long Term Mechanism (LEA Portal Connections)
    - Use existing and aspirational Law Enforcement Portals as "Identity Providers"
    - INTERPOL, FBI are both exploring whether/how their portals may connect w ICANN
    - Timeline = ?? (Long Term effort)
  - Short Term Mechanism (List of Law Enforcement Agencies & Identifiers)
    - Lists of law enforcement identifiers have been gathered
    - Discussions with ICANN are ongoing re:
      - Potential integrating those identifiers into RDRS
      - Making those identifiers easily accessible to registrars

Registration Data Request Service (RDRS)

EPDP Phase 2 > SSAD ODA > RDRS

Enforceable ICANN Policy

| Temp. Spec. | Interim Policy (Extension of Temp. Spec.) | Reg. Data Consensus Policy | Final Access System |

Policy Development (GNSO) & Implementation (org + IRT)

| EPDP Phase 1 | Phase 1 Policy Implementation |

EPDP Phase 2 (SSAD)

EPDP Phase 2A

Data Accuracy Scoping Team

GNSO Council 6-mo. Pauses

Urgent Requests

Phase 2A Impl.

Scoping Team

Privacy/Proxy

SSAD (Ph. 2) Impl.

ICANN Board & Org

SSAD Operational Design Phase

Registration Data Request Service
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| 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 | |

Legend: **Completed**   **Ongoing**   **Not Started & Uncertain Timeline**

Registration Data Request System (RDRS)

<< https://rdrs.icann.org >>

NOW AVAILABLE

New Service to Request Access to Nonpublic gTLD Registration Data

Your domain name
e.g. www.icann.org/rdrs-en
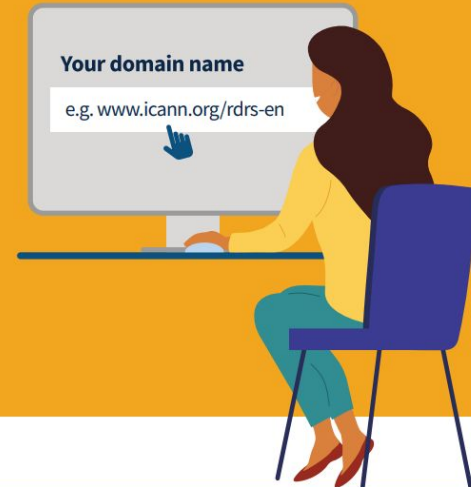
About the Registration Data Request Service

The Registration Data Request Service is a free service designed to handle requests for access to nonpublic registration data related to generic top-level domains (gTLDs).

Due to personal data protection laws, many ICANN-accredited registrars are now required to redact personal data from public records. The Registration Data Request Service connects individuals or organizations (requestors) who need access to nonpublic registration data with the relevant ICANN-accredited registrars for gTLD domain names that are participating in the service.

Making Nonpublic gTLD Registration Data Requests Easier

- ✅ Free, global, one-stop shop to submit registration data requests to participating registrars worldwide.

- ✅ Submit important information, such as evidence of credentials, court orders, legal affidavits, and subpoenas, which a registrar will require in its review, in one central location.

- ✅ Flag requests that need to be prioritized by registrars.

Why RDRS? To request access to redacted data

Redacted

Unredacted

VS

Board Comments on RDRS Prior to ICANN82

Following discussions in the January 2025 Board Workshop, and awaiting the GNSO Standing Committee's future report on the RDRS Pilot, **views of the ICANN Board on the future of RDRS** were shared in meetings with the GAC and the RDRS Standing Committee (10 February 2025):

- A lot has been learned from the RDRS Pilot to date, it is not clear that there is much more to be learned

- The <u>RDRS is a useful tool that should continue to be up and running</u>

- Some changes are needed, such as:
  - Participation by all registrars
  - Integration of (affiliated) privacy/proxy services into the system
  - Development of requestor authentication mechanisms where appropriate (in particular for law enforcement)
  - Allowing voluntary participation by ccTLDs

- These changes could be informed by policy that is either already available (including EPDP Phase 2 SSAD) or that may need to be developed

GNSO RDRS Standing Committee Ongoing Deliberations

Charter of the RDRS Standing Committee:

The Scoping Team was expected to analyze RDRS data and consider:

#1. **Trends** that can be identified over a month-by-month period;

#2. **Possible technical updates** that should be considered to RDRS and/or related messaging and promotion

#3. **Specific lessons learned that should be factored into the consideration of how to proceed with the SSAD recommendations**;

#4. **Suggestions to the Council for a proposed recommendation(s) to the ICANN Board** in relation to the consideration of the SSAD recommendations

Current Timeline and Progress of Standing Committee Report:

- Assignments/Chapters 1 and 2 complete.

- Assignment/Chapter 3 nearly complete.

- Assignment/Chapter 4 being drafted.

- Report to be published for Public Comment in August 2025

- Final Report to GNSO Council by ICANN84

GNSO RDRS Standing Committee Ongoing Deliberations

Regarding the EPDP Phase 2 SSAD Recommendations, the Standing Committee is expected to recommend to the GNSO Council either**:**

- Full adoption of all Recommendations,

- Rejection of all Recommendations,

- **Modifications of some Recommendations,**

- **A combination thereof.**

Key Lessons of RDRS to Inform SSAD Consideration

#1	Accreditation	**Not in RDRS (but possible input)**
#2	Accreditation of Governmental Entities	
#3 of	Criteria and Content Requests	**Standing Committee will likely recommend modification**
#4	Acknowledgement of receipt	
#5	Response Requirements	
#6	Priority Levels	
#7	Requestor Purposes	
#8	Contracted Party Authorization	
#9	Automation of SSAD Processing	
#10	Determining variable SLAs for response times for SSAD	**Not in RDRS (but possible input)**

#11	SSAD Terms and Conditions	**Standing Committee will likely recommend modification**
#12	Disclosure Requirements	
#13	Query Policy	
#14	Financial Sustainability	**Not in RDRS (but possible lessons)**
#15	Logging	
#16	Audits	
#17	Reporting Requirements	
#18	**Review of Implementation of recommendations concerning SSAD using a GNSO Standing Committee**	**Standing Committee will likely recommend modification**

Reference: SSAD Recommendations in the EPDP Phase 2 Final Report (31 July 2020)

Rec. 14 - Financial Sustainability

With 2,416 RDRS requests submitted in the first year of the pilot, and operational costs of just over $850,000 USD for the year, the cost per request was around $354

Actuals Through 31 December 2024			
Registration Data Request Services	Personnel	External Vendors	Total USD
Development (Dec 2022 – Nov 2023)	$1,630,335	$16,500	$1,646,835
Operation (Dec 2023 - Dec 2024)	$768,226	$88,245	$856,471
Project To Date	$2,398,561	$104,745	$2,503,306
Unaudited - any arithmetic inconsistencies are due to rounding			

GNSO RDRS Standing Committee Ongoing Deliberations

Once the RDRS Standing Committee (SC) Report is delivered (by ICANN84),
the GNSO Council is expected to:

- Consider the Standing Committee recommendations
- Resume discussion/engagement with ICANN Board
- Based on the above considerations, the GNSO Council will reconvene policy work
- Eventually, it will provide the ICANN Board with the final GNSO Policy Recommendations regarding the future system for access and disclosure of registration data.

The ICANN Board will then determine to adopt or reject those eventual recommendations.

Reminder of GAC Concerns with initial SSAD Recs.

- 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.*
  - Called for further clarification of the status and role of each of the data controllers and processors

- 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 step for the GAC: **Before ICANN84 (Oct. 2025) the GAC will have the opportunity to provide input on the Standing Committee report that is expected in August 2025**

Accuracy of Registration Data

Accuracy of Registration Data

The GAC has consistently emphasized the importance of data accuracy

- Work on accuracy has been stalled since the pause in the GNSO Accuracy Scoping Team's work in 2022

- When the GNSO issued new "threshold questions" on accuracy in early 2025, the GAC and other community members submitted responses

- A GNSO Small Team is now reviewing the responses to recommend next steps. Preliminarily, the Small Team has suggested:
    - Investigating shortening the timeline for registrars to perform registration data validation and verification from the current 15 day limit
    - Registrant education to encourage submission of accurate information
    - Work to ensure registration data records show when a domain is suspended due to inaccurate data

- Final recommendations from the Small Team are expected in the coming weeks

- During this week's GAC-Board bilateral, the Board provided information on accuracy-related requirements in ICANN's contracts

- Due to challenges with addressing accuracy directly, the Board noted accuracy could be addressed indirectly through possible policy development on separate issues

Considerations for ICANN83 Prague Communiqué

ICANN | **GAC**

Governmental Advisory Committee

Considerations for ICANN83 Prague Communiqué

No advice proposed, but the GAC might note the following Issues of Importance:

- *Registration Data Request Service (RDRS)*
  - Look forward to the Standing Committee's Final Report, future work on improvements to the system, and analysis of alignment with existing policy recommendations; reiterate call for mandatory participation by gTLD registrars.

- *Urgent Requests for Disclosure of Registration Data*
  - Acknowledge progress by the Practitioner's Group led by the PSWG and the ongoing IRT discussions on timeline; GAC has expressed support for a 24hr response time to Urgent Requests.

- *Accuracy of Registration Data*
  - Reiterate the importance of accuracy and welcome the possible next steps suggested by the GNSO Small Team and related remarks from the Board.